

**MARK LAYTON - April 15, 2022**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FRANCISCO CANTU, et al.                     )  
   )  
   )  
vs.   ) CASE NO. 5:19-cv-00615  
   )  
MAMMOTH ENERGY SERVICES,             )  
INC., et al.                                     )

ORAL AND VIDEOTAPED DEPOSITION OF  
MARK LAYTON  
APRIL 15TH, 2022  
(Volume 1)

The ORAL AND VIDEOTAPED DEPOSITION OF MARK LAYTON, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 15th day of April, 2022, from 8:44 a.m. to 3:47 p.m., before Robin Rios, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at Porter Hedges, LLP, 1000 Main Street, 36th Floor, Houston, Texas 77002, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: All right. Today is 2 Friday, April 15th, 2022. We're on the record at 3 8:44 a.m. 4 MR. STUKENBERG: Let the record reflect 5 that Mr. Moulton noticed this deposition on Good Friday. 6 The office is closed. We're all here anyway. 7 MR. MOULTON: And this was the date that 8 the defendants offered for this witness and indicated 9 they had very limited time and that's the way I 10 understand that to be true. So today is the day. So I 11 blame defendants, but I digress. Let's go ahead and 12 start the depo. 13 THE REPORTER: Would you raise your right 14 hand and be sworn? 15 (The witness was sworn.) 16 MR. MOULTON: All right. Before we get 17 started, could we just have announcements of who's here 18 for the record? I have -- well, I'm David Moulton for 19 the plaintiffs. And who else do we have in the room? 20 MR. STUKENBERG: Will Stukenberg, Porter 21 Hedges for defendants. 22 MR. STAMEY: Harris Stamey, Porter Hedges 23 for the defendants. 24 MR. MOULTON: And, of course, we have the 25 witness.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q What's your other number? 2 A <b>(405)812-6613.</b> 3 Q Who's the carrier? 4 A <b>Sprint or T-Mobile.</b> 5 Q Any other cell phones? 6 A <b>Nope.</b> 7 Q What -- what do -- do you have an office 8 phone? 9 A <b>I do.</b> 10 Q What's the number? 11 A <b>(405)563-9961.</b> 12 Q Other than your cell phones and your office 13 number, are -- are there any other numbers that you use 14 for work? 15 A <b>Well, to bifurcate, I have one cell phone</b> 16 <b>that's personal and one that's for work. So there's one</b> 17 <b>cell phone for work and an office phone.</b> 18 Q Which -- which one is the -- which one of the 19 cell phones is your -- is a work cell phone? 20 A <b>The 226 number.</b> 21 Q Do you use your -- do you have a home phone? 22 A <b>I do.</b> 23 Q Okay. What's that number? 24 A <b>(405)373-5396.</b> 25 Q Are -- are there any other phone number -- or,</p>
<p style="text-align: right;">Page 7</p> <p>1 MARK EVERETT LAYTON, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MR. MOULTON: 5 Q Sir, what is your full name? 6 A <b>Mark Everett Layton.</b> 7 Q What's your date of birth, sir? 8 A <b>September 10th, 1974.</b> 9 Q And what is your address where you live? 10 A <b>8533 Rock Cliff Way.</b> 11 Q Where? 12 A <b>Piedmont, Oklahoma.</b> 13 Q What's the zip? 14 A <b>73078.</b> 15 Q How long have you lived at that address? 16 A <b>Almost six years.</b> 17 Q And what's your work address? 18 A <b>It's 14201 Caliber Drive, Oklahoma City,</b> 19 <b>73134.</b> 20 Q And what's your cell phone number? 21 A <b>(405)226-0963.</b> 22 Q What's your carrier? 23 A <b>I believe that one is with Verizon.</b> 24 Q Do you have more than one cell phone? 25 A <b>I do.</b></p>	<p style="text-align: right;">Page 9</p> <p>1 yeah. Are there any other phones that you use besides 2 the ones we just talked about? 3 A <b>No.</b> 4 Q No burners? 5 A <b>No.</b> 6 Q Okay. Sir, this is not the first time you've 7 given a deposition regarding workers that were staffed 8 to Puerto Rico as part of electrical restoration work; 9 is that correct? 10 A <b>That's correct.</b> 11 Q Okay. How many depositions have you done in 12 this regard? 13 A <b>One.</b> 14 Q Okay. And what cases were those? 15 A <b>It was a case regarding some arbitrations held</b> 16 <b>in Puerto Rico. I don't recall the exact styling.</b> 17 Q Okay. Now, you -- and you have testified now 18 in several of those arbitrations, correct? 19 A <b>I testified one time --</b> 20 Q Okay. 21 A <b>-- in connection with those arbitrations.</b> 22 <b>That is correct.</b> 23 Q Okay. So in Puerto Rico you -- you've been on 24 the stand once? 25 A <b>That's correct.</b></p>

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<p style="text-align: right;">Page 10</p> <p>1 Q Okay. And in a couple weeks you'll be out 2 there again to testify again?</p> <p>3 A That's undetermined whether I'll be there or 4 not, but I don't believe it will be to testify again.</p> <p>5 Q Got it. Okay. Are there any other -- are 6 there any other depositions or trials where you're -- 7 coming up that you'll be testifying about wage-an-hour 8 matters for Mammoth or its subsidiaries?</p> <p>9 A By Mammoth or its subsidiaries, you'll need to 10 be more specific on legal entity. There are a couple of 11 Mammoth entities.</p> <p>12 Q How about any entities you're associated with?</p> <p>13 A There are, I think, a matter that's defended 14 by Akin Gump that presumably will -- I'll appear for a 15 deposition at some point in the next month or two.</p> <p>16 Q Okay. And what is that matter?</p> <p>17 A It's a wage-an-hour case. I don't recall the 18 exact styling.</p> <p>19 Q Who -- which of the entities that you're 20 affiliated with is getting sued?</p> <p>21 A I don't recall the exact defendants in -- in 22 that matter.</p> <p>23 Q Even -- even if you don't recall the exact 24 name of the defendant, do you remember any part of the 25 name of the defendant?</p>	<p style="text-align: right;">Page 12</p> <p>1 at that time?</p> <p>2 A That was a question. Archer Well or one of 3 its subsidiaries?</p> <p>4 Q Yes.</p> <p>5 A Archer Well had a number of subsidiaries. So 6 I don't understand your question.</p> <p>7 Q Well, let's just do this. Before I get to 8 that, let's just take care of a housekeeping matter. 9 (Plaintiffs' Exhibit 152 marked.)</p> <p>10 Q (By Mr. Moulton) I'm going to show you what's 11 been marked as Plaintiff's Exhibit 152. This is 12 Plaintiff's Amended Notice of Deposition of Mark Layton, 13 Individually as a 30(B)(6) Witness. Are you familiar 14 with this document?</p> <p>15 A I'm familiar with the document. I didn't know 16 whether you were showing it to me or not.</p> <p>17 Q Oh, it's -- oh, you're not on.</p> <p>18 A I don't see anything.</p> <p>19 Q You're not on to the --</p> <p>20 MR. STUKENBERG: There's nothing on my 21 screen either.</p> <p>22 MR. STAMEY: We're on. I don't see you 23 on.</p> <p>24 MR. MOULTON: Are you on today's Zoom?</p> <p>25 MR. STAMEY: Whatever this was.</p>
<p style="text-align: right;">Page 11</p> <p>1 A Without limiting the -- the number of 2 defendants, I believe that Cobra as well as probably 3 Higher Power and 5 Star are involved with that one. I'm 4 not sure whether Mammoth Energy Services, Inc., is named 5 or not. I'd have to -- to look at the styling to 6 confirm one way or the other.</p> <p>7 Q Okay. Well, Cobra and Higher Power and 5 Star 8 are all affiliated with Mammoth, correct?</p> <p>9 A By "affiliated," they are indirect 10 subsidiaries of Mammoth Energy Services, Inc.</p> <p>11 Q Okay. Is that a case that's with Morgan &amp; 12 Morgan out of Florida?</p> <p>13 A I don't recall who the plaintiff's attorneys 14 are.</p> <p>15 Q Okay.</p> <p>16 Okay. Besides that case, are there any 17 others?</p> <p>18 A No, sir --</p> <p>19 Q Okay.</p> <p>20 A -- not that I recall.</p> <p>21 Q Do you recall the wage-an-hour lawsuit against 22 Archer Well?</p> <p>23 A Against Archer Well or one of its 24 subsidiaries?</p> <p>25 Q Okay. Were you affiliated with that company</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. MOULTON: Is that from yesterday?</p> <p>2 MR. STAMEY: I don't know. It's what was 3 on the table.</p> <p>4 MR. MOULTON: Oh, let me see. Yeah. 5 That's from Scott Whitsett's. It's not today's.</p> <p>6 MR. STAMEY: Do you have one for today to 7 tell us what to log into?</p> <p>8 MR. MOULTON: Yeah, or I can just -- if 9 everybody's on Scott's, I'll just go back to yesterday's 10 and do that.</p> <p>11 MR. STUKENBERG: Is your screen on here?</p> <p>12 THE WITNESS: It's on, but it just has my 13 name.</p> <p>14 MR. MOULTON: We're just in different 15 meetings.</p> <p>16 THE WITNESS: You flashed up here 17 briefly, so it looks like you're probably connected.</p> <p>18 Q (By Mr. Moulton) All right. So Exhibit 152. 19 Mr. Layton, are you familiar with this deposition 20 notice?</p> <p>21 A Yes.</p> <p>22 Q Okay. And you understand you've been 23 designated as the person most knowledgeable to testify 24 about the matters that are listed here?</p> <p>25 A Yes, sir.</p>

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<p style="text-align: right;">Page 14</p> <p>1 (Plaintiffs' Exhibit 153 marked.)</p> <p>2 Q (By Mr. Moulton) Okay. Let me show you</p> <p>3 Plaintiff's Exhibit 153. Do you recognize this as</p> <p>4 information from your LinkedIn page?</p> <p>5 MR. STUKENBERG: First of all, the</p> <p>6 exhibit's not up. Second, I'm going to go ahead and</p> <p>7 object to using documents that were not produced in</p> <p>8 advance of the deposition. We've had a lot of discovery</p> <p>9 fights, and to pull out documents at this stage of</p> <p>10 litigation that haven't been produced is improper. So</p> <p>11 any questioning related to LinkedIn pages or other</p> <p>12 documents that haven't been produced, we're going to</p> <p>13 object to.</p> <p>14 Q (By Mr. Moulton) All right. Mr. Layton, have</p> <p>15 you been the CFO of a company called Stingray Pressure</p> <p>16 Pumping?</p> <p>17 A Yes, I have.</p> <p>18 Q Okay. And you were also the controller of</p> <p>19 Archer - the well company?</p> <p>20 A I was controller of the pressure pumping</p> <p>21 entity that was wholly owned by Archer Well.</p> <p>22 Q Okay. And Stingray and Archer have both been</p> <p>23 the subjects of wage-an-hour lawsuits, correct?</p> <p>24 A By "Archer," if you're referencing Archer</p> <p>25 Pressure Pumping, I don't recall any wage-an-hour</p>	<p style="text-align: right;">Page 16</p> <p>1 Stingray Pressure Pumping when Stingray was the subject</p> <p>2 of a wage-an-hour lawsuit?</p> <p>3 A Yes, I was.</p> <p>4 Q Okay. What was your -- did you have any role</p> <p>5 in that lawsuit at all?</p> <p>6 A Ancillary, I was involved. I don't believe</p> <p>7 I offered any testimony in that matter.</p> <p>8 Q What was the nature of the claim?</p> <p>9 A I believe that was a wage-an-hour matter, as I</p> <p>10 recall.</p> <p>11 Q Do you remember what kind?</p> <p>12 A No, sir. I don't -- I don't recall off the</p> <p>13 top of my head.</p> <p>14 Q Okay. Was it one of the ones that my firm</p> <p>15 brought?</p> <p>16 A I don't recall who the plaintiffs in the</p> <p>17 matter were.</p> <p>18 Q All right. So Mammoth Energy owns Cobra and</p> <p>19 Higher Power, correct?</p> <p>20 A That's incorrect.</p> <p>21 Q Okay. Why is it incorrect?</p> <p>22 A Mammoth Energy Services, Inc., owns Mammoth</p> <p>23 Energy Partners, LLC. Mammoth Energy Partners, LLC,</p> <p>24 owns Lion Power. Lion Power owns Higher Power and</p> <p>25 5 Star.</p>
<p style="text-align: right;">Page 15</p> <p>1 matters in regards to Archer Pressure Pumping.</p> <p>2 Q Now -- and I realize you have a very technical</p> <p>3 knowledge of every single one of these entities and</p> <p>4 which ones are which, but that's not my question.</p> <p>5 My question is: Were you affiliated with</p> <p>6 Archer or any of its affiliates that were the subject of</p> <p>7 a wage-an-hour lawsuit?</p> <p>8 A What I'm telling you is I worked for Archer</p> <p>9 Pressure Pumping --</p> <p>10 Q Uh-huh.</p> <p>11 A -- for the time period referenced. I worked</p> <p>12 for Archer Well for a couple of months towards the tail</p> <p>13 end of that. In my capacity in those roles, I'm not</p> <p>14 aware of any FLSA matters regarding Archer Pressure</p> <p>15 Pumping. While I was at Archer Well for that short</p> <p>16 stint, I wasn't involved in any FLSA matters.</p> <p>17 Q Did you -- have you -- besides the -- the</p> <p>18 cases involving Mammoth and its subsidiaries that we've</p> <p>19 already covered, have you provided any testimony about</p> <p>20 wage-an-hour matters in -- in the past?</p> <p>21 A In regards to testimony on wage-an-hour</p> <p>22 matters, I -- I don't recall any testimony other than</p> <p>23 that testimony that I referenced earlier in the</p> <p>24 deposition today.</p> <p>25 Q Were you a chief financial officer with</p>	<p style="text-align: right;">Page 17</p> <p>1 (Plaintiffs' Exhibit 154 marked.)</p> <p>2 Q (By Mr. Moulton) I'm going to show you what's</p> <p>3 been labeled as Plaintiff's Exhibit 154.</p> <p>4 MR. STUKENBERG: So has this been</p> <p>5 produced?</p> <p>6 MR. MOULTON: Yes. It's produced by you,</p> <p>7 Will, just like it says at the bottom.</p> <p>8 MR. STUKENBERG: Okay.</p> <p>9 MR. MOULTON: Yes.</p> <p>10 Q (By Mr. Moulton) Mr. Layton, looking at</p> <p>11 exhibit -- Plaintiff's Exhibit 154, do you recognize</p> <p>12 this as Mammoth Energy Services, Inc.'s, announcement of</p> <p>13 their operational and financial results for 2017?</p> <p>14 A Appears to be the case, yes.</p> <p>15 Q Yeah. You see in the very first paragraph</p> <p>16 that Mammoth Energy Services, Inc., is referred to as</p> <p>17 "Mammoth" or the "Company"?</p> <p>18 A I see that.</p> <p>19 Q Okay. If we go to the very next page, 3792,</p> <p>20 it says here, "During 2017, Mammoth broadened its</p> <p>21 service offerings by expanding into the utility</p> <p>22 infrastructure business with the formation of Cobra</p> <p>23 Acquisitions, LLC, ('Cobra')."</p> <p>24 Do you see that?</p> <p>25 A I see that.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q That's a true statement, isn't it?</p> <p>2 A It's a statement regarding the -- the company.</p> <p>3 So it doesn't say that Mammoth Energy Services, Inc.,</p> <p>4 owns Mammoth Energy Partners, which owns the</p> <p>5 subsidiaries, nor does it have to.</p> <p>6 Q No. I'm just -- I'm just -- I have a simple</p> <p>7 question. I know you want to give a speech, but my</p> <p>8 question is: Is this accurate or not?</p> <p>9 A I'm not giving a speech. I'm giving you the</p> <p>10 technical detail, and you're trying to --</p> <p>11 Q No.</p> <p>12 A -- parse a paragraph.</p> <p>13 Q No. I just want to know if that statement is</p> <p>14 true or not. Is it true or -- do you agree with it or</p> <p>15 no? Yes or no?</p> <p>16 A It's a true statement --</p> <p>17 Q Okay. Then let's --</p> <p>18 A -- but you're parsing --</p> <p>19 Q Thanks.</p> <p>20 A -- detail that's missing from the statement --</p> <p>21 Q No, that's --</p> <p>22 A -- so --</p> <p>23 Q -- not what I'm asking.</p> <p>24 MR. STUKENBERG: The witness needs --</p> <p>25 Q (By Mr. Moulton) That's fine. Thank you.</p>	<p style="text-align: right;">Page 20</p> <p>1 A I understand the generalization. I object to</p> <p>2 the characterization that Mammoth Energy Services, Inc.,</p> <p>3 did any work in Puerto Rico. It did not. Mammoth</p> <p>4 Energy Services, Inc., has no employees. As such,</p> <p>5 Mammoth Energy Services, Inc., did no work in Puerto</p> <p>6 Rico and had no employees to do any work in -- in Puerto</p> <p>7 Rico, underneath that legal entity. The subsidiaries</p> <p>8 did work. Mammoth Energy Services, Inc., did not.</p> <p>9 MR. MOULTON: I'm going to object to all</p> <p>10 that as nonresponsive.</p> <p>11 (Plaintiffs' Exhibit 155 marked.)</p> <p>12 Q (By Mr. Moulton) All right. Sir, let's go to</p> <p>13 Exhibit 155. Are you familiar with an audit that was</p> <p>14 performed by FEMA that's Exhibit 155?</p> <p>15 A I don't believe this is an audit. I'm</p> <p>16 familiar with this document.</p> <p>17 Q What would you call it?</p> <p>18 A It's labeled on the front, but it's certainly</p> <p>19 not an audit.</p> <p>20 Q What do you call this document?</p> <p>21 A I call it audit with a -- that it's named, but</p> <p>22 an audit has a technical connotation that's not the</p> <p>23 case --</p> <p>24 Q Okay.</p> <p>25 A -- for this particular document.</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. STUKENBERG: If the witness needs to</p> <p>2 finish his answer to give context, please allow him to</p> <p>3 do so.</p> <p>4 MR. MOULTON: That's -- I -- I will</p> <p>5 ask -- if I want context, I'll ask for context.</p> <p>6 Q (By Mr. Moulton) All right. Now, let's keep</p> <p>7 going in the sentence. "Mammoth broadened its service</p> <p>8 offerings by expanding into utility infrastructure</p> <p>9 business with the formation of Cobra Acquisitions" -- we</p> <p>10 covered that -- and the acquisitions of Higher Power</p> <p>11 Electrical, LLC, and 5 Star Electric, LLC, in July of</p> <p>12 2017.</p> <p>13 Do you agree with the rest of that</p> <p>14 sentence that we just read?</p> <p>15 A That is correct with the caveat that I gave</p> <p>16 you earlier regarding context to the matter.</p> <p>17 Q So in -- I'm going to have -- ask you for a</p> <p>18 little while -- we're going to talk about Mammoth Energy</p> <p>19 and its affiliates with respect to work in Puerto Rico,</p> <p>20 the work that is the subject matter of this case with</p> <p>21 the workers that are suing Mammoth and Cobra and Higher</p> <p>22 Power for overtime pay.</p> <p>23 Do you under -- just -- I'm kind of --</p> <p>24 just kind of letting you know that. Do you understand</p> <p>25 that?</p>	<p style="text-align: right;">Page 21</p> <p>1 Q For purpose of this deposition, to make this</p> <p>2 easier between me and you so we don't, like, go back and</p> <p>3 forth over who's using which word, what word do you</p> <p>4 prefer to talk to -- when we talk about this document?</p> <p>5 A The document's labeled as it is, and I'll let</p> <p>6 it speak for itself.</p> <p>7 Q Okay. We'll call it Exhibit 155. Is that</p> <p>8 okay with you?</p> <p>9 A Sure.</p> <p>10 Q Okay.</p> <p>11 All right. So in Exhibit 155, I want to</p> <p>12 direct your attention to Page 771. And this is talking</p> <p>13 about a company -- one of the affiliates of Mammoth --</p> <p>14 Mammoth services -- Mammoth Energy Services, Inc.,</p> <p>15 called Cobra, correct?</p> <p>16 A Indirectly, yes.</p> <p>17 Q Okay.</p> <p>18 A We've already gone through the technical</p> <p>19 legal --</p> <p>20 Q All right.</p> <p>21 A -- structure.</p> <p>22 Q So Cobra got a contract to perform work in</p> <p>23 Puerto Rico to restore power after Hurricane Maria,</p> <p>24 correct?</p> <p>25 A There were two separate contracts.</p>

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<p>1 Q Okay. So what are the two contracts?</p> <p>2 A There was a contract entered into in October,</p> <p>3 2017, regarding the -- the restoration of power services</p> <p>4 in Puerto Rico between Cobra Acquisitions and the Puerto</p> <p>5 Rico Electric Power Authority. There's a second</p> <p>6 separate contract entered into in 2018 between those two</p> <p>7 entities.</p> <p>8 Q Okay. And that was -- the first one was</p> <p>9 restoration. The 2018 contract, what do you -- what do</p> <p>10 you call it?</p> <p>11 A It was restoration as well, but it had some</p> <p>12 reconstruction aspects.</p> <p>13 Q Okay. Restoration and reconstruction in 2018;</p> <p>14 is that correct?</p> <p>15 A Yes, sir.</p> <p>16 Q All right. So looking at the highlighted part</p> <p>17 on your screen that's Bates numbered 771 in Exhibit 155,</p> <p>18 we -- we show here a summary of what the Cobra contract</p> <p>19 included.</p> <p>20 Do you agree with that summary?</p> <p>21 A That's a high-level summary of the amounts</p> <p>22 that PREPA agreed to compensate Cobra for services under</p> <p>23 that contract.</p> <p>24 Q Okay. So on that -- the first bullet point of</p> <p>25 the highlight, "A 250-lineman crew, including labor and</p>	<p>1 A Those are the contracted rates for those</p> <p>2 items.</p> <p>3 Q Okay. How is it, then -- I mean, because the</p> <p>4 reason why I was a little confused is you're aware of</p> <p>5 the fact that, like, you know, Higher Power didn't have</p> <p>6 enough money to meet the first payroll on the island.</p> <p>7 Does that sound familiar to you?</p> <p>8 A That's an incorrect statement that you've</p> <p>9 made.</p> <p>10 Q Okay. Why -- why -- why is that incorrect?</p> <p>11 A I think you're overgeneralizing a treasury</p> <p>12 service. So to make a flamboyant statement that Higher</p> <p>13 Power did not have the money to fund payroll is -- is</p> <p>14 technically incorrect. It's not part of the treasury</p> <p>15 system. So I think that you lack some -- some detail</p> <p>16 to -- to make that conclusory statement.</p> <p>17 Q Okay. Well, does Higher Power have its own</p> <p>18 bank account?</p> <p>19 A Yes, it does.</p> <p>20 Q Okay. So was there enough money in its bank</p> <p>21 account to make the first payroll?</p> <p>22 A Higher Power made all of its payrolls.</p> <p>23 Q And how did it make its payroll?</p> <p>24 A Through a treasury management system.</p> <p>25 Q What's the treasury management system?</p>
Page 23	Page 25
<p>1 equipment, at a daily blended rate of \$4,000 per day --</p> <p>2 or per skilled lineman per day."</p> <p>3 Do you agree with that?</p> <p>4 A That's what the statement says, yes.</p> <p>5 Q Okay. And do you agree with the next one? "A</p> <p>6 550-person camp, including meals, lodging, power, and</p> <p>7 laundry, at a daily rate of \$155,000."</p> <p>8 A That's correct.</p> <p>9 Q Okay. And do you agree with that -- the</p> <p>10 contract also provided for, "A 104-person security team</p> <p>11 at \$2,000 per person per day"?</p> <p>12 A That's what it states, yes.</p> <p>13 Q And, "A 50-person logistics team at \$2500</p> <p>14 person -- per person per day"?</p> <p>15 A That's correct, yes.</p> <p>16 Q And, "A 30-person management, operations, and</p> <p>17 safety team at 2500 per person per day."</p> <p>18 Do you agree with that as well?</p> <p>19 A Yes, sir.</p> <p>20 Q Okay. Where did Cobra get the money to pay</p> <p>21 for all this?</p> <p>22 A These are the rates that Cobra was paid by</p> <p>23 PREPA.</p> <p>24 Q Right. Okay. So -- so PREPA paid Cobra</p> <p>25 for -- to provide all this?</p>	<p>1 A The treasury management system is managed by</p> <p>2 Mammoth Energy, Inc.</p> <p>3 Q Okay.</p> <p>4 A Cash is swept daily from the subsidiary level,</p> <p>5 Higher Power being one of those subsidiaries, up to</p> <p>6 Mammoth Energy Partners, LLC. Those entries are</p> <p>7 recorded on all of the subsidiary books in and out of</p> <p>8 their own legal bank accounts. Cash is pushed up and</p> <p>9 down as necessary under that consolidated treasury</p> <p>10 management system between the legal entities, as I</p> <p>11 mentioned, managed by Mammoth Energy, Inc.</p> <p>12 Q And what's Mammoth Energy, Inc.'s,</p> <p>13 relationship to Mammoth Energy Services, Inc.?</p> <p>14 A Mammoth Energy Services, Inc., owns Mammoth</p> <p>15 Energy Partners, LLC. Mammoth Energy Partners, LLC,</p> <p>16 owns Mammoth Energy, Inc.</p> <p>17 Q And I'm -- and I believe you've testified</p> <p>18 earlier that the -- the term y'all use is cash sweeping</p> <p>19 down and up?</p> <p>20 A As part of a broader answer regarding a</p> <p>21 treasury management system between the entities.</p> <p>22 Q Okay. So Mammoth Energy, Inc., can push cash</p> <p>23 down the line to subsidiaries like Higher Power. It can</p> <p>24 also sweep the cash up; is that right?</p> <p>25 A That's not what I testified to.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q I'm asking you is that true because that's</p> <p>2 what it sounds like you're saying to me. I'm just</p> <p>3 asking you to verify.</p> <p>4 A What I said to you was Mammoth Energy, Inc. --</p> <p>5 Q Uh-huh.</p> <p>6 A -- managed the processes, meaning the</p> <p>7 employees inside of Mammoth Energy, Inc. --</p> <p>8 Q Right.</p> <p>9 A -- managed that process. The cash is moved</p> <p>10 between Mammoth Energy Partners, LLC, and various</p> <p>11 subsidiaries, including Higher Power.</p> <p>12 Q Okay. So it -- but Mammoth Energy, Inc.,</p> <p>13 manages that entire process?</p> <p>14 A Mammoth Energy, Inc., employs the individuals</p> <p>15 through a shared services agreement. So in that</p> <p>16 context, yes.</p> <p>17 Q So it's --</p> <p>18 A Those shared services are billed to each one</p> <p>19 of those entities on a monthly basis. So in other</p> <p>20 words, in this generalized example that you've given, if</p> <p>21 Higher Power pushed money to Mammoth Energy Partners,</p> <p>22 LLC, Higher Power would record that on their financials</p> <p>23 and their bank account.</p> <p>24 Q Uh-huh.</p> <p>25 A Mammoth Energy Partners, LLC, would record it</p>	<p style="text-align: right;">Page 28</p> <p>1 services to the other entities, when specifically</p> <p>2 identifiable, are recorded to those entities. When</p> <p>3 they're not specifically identifiable, they are</p> <p>4 allocated to entities for which Mammoth Energy, Inc.,</p> <p>5 performs services on a monthly basis.</p> <p>6 Q So I guess maybe more directly, is -- does</p> <p>7 Higher Power have any employees that are on this shared</p> <p>8 resources employee group during the time we're talking</p> <p>9 about?</p> <p>10 A Higher Power employees are Higher Power</p> <p>11 employees.</p> <p>12 Q Uh-huh.</p> <p>13 A Mammoth Energy, Inc., employees are Mammoth</p> <p>14 Energy, Inc., employees.</p> <p>15 Q Okay. So the -- the sweeping that's managed</p> <p>16 by MEI doesn't have -- the employees that are doing that</p> <p>17 don't have any Higher Power guys on it -- or any Higher</p> <p>18 Power employees on it?</p> <p>19 A As I mentioned, Mammoth Energy, Inc.,</p> <p>20 employees are Mammoth Energy, Inc., employees. Higher</p> <p>21 Power employees are Higher Power employees. To the</p> <p>22 extent there are shared services, then those shared</p> <p>23 services are billed across the legal entities.</p> <p>24 MR. MOULTON: And -- and I'll object to</p> <p>25 that as nonresponsive.</p>
<p style="text-align: right;">Page 27</p> <p>1 on their financials; and it would hit their bank</p> <p>2 account. Mammoth Energy, Inc., who has the employees</p> <p>3 that manage this process, would invoice both Mammoth --</p> <p>4 would record a charge to both Mammoth Energy Partners,</p> <p>5 LLC, as well as Higher Power for those shared services</p> <p>6 provided on a monthly basis.</p> <p>7 Q Okay. So if a company like 5 Star or -- or</p> <p>8 Higher Power needs money for payroll, they can get that</p> <p>9 money through this process?</p> <p>10 A Overgeneralized; but, yes, that's the</p> <p>11 high-level context.</p> <p>12 Q Right. And you said with the shared resources</p> <p>13 that -- are some employees in the shared resources</p> <p>14 group?</p> <p>15 A Mammoth Energy, Inc., does have employees,</p> <p>16 yes.</p> <p>17 Q Right. But when you said "shared resources,"</p> <p>18 is -- are -- are the folks in that shared resource group</p> <p>19 with Mammoth Energy, Inc., only employed by Mammoth</p> <p>20 Energy, Inc.; or are they also employed by other</p> <p>21 companies?</p> <p>22 A The employees that are employed by Mammoth</p> <p>23 Energy, Inc., are employed by Mammoth Energy, Inc.</p> <p>24 That's who their paychecks come from. That's what their</p> <p>25 W-2s state. Their services, to the extent they perform</p>	<p style="text-align: right;">Page 29</p> <p>1 Q (By Mr. Moulton) I wasn't asking about how</p> <p>2 it's billed. I just wanted to make sure -- because</p> <p>3 there's -- without having to go name everybody, because</p> <p>4 I -- there's no point in that. For Mammoth Energy,</p> <p>5 Inc., that have managed this financial sweeping process,</p> <p>6 I just have a simple question: The folks that are</p> <p>7 managing that financial sweeping process at Mammoth</p> <p>8 Energy, Inc., none of them are also employees of Higher</p> <p>9 Power. Yes or no?</p> <p>10 A The employees in both legal entities have</p> <p>11 single employers.</p> <p>12 Q Okay. So the answer is no, there aren't --</p> <p>13 there aren't any -- there's no mixing there. Like,</p> <p>14 there's no Higher Power people on the MEI folk -- in the</p> <p>15 MEI group of people that manage the sweeping of the</p> <p>16 money?</p> <p>17 A You're -- you're conflating issues and I</p> <p>18 realize that you're -- you're intentionally leaving that</p> <p>19 vague, but you're leaving out detail.</p> <p>20 Q I don't know why you're --</p> <p>21 A The employees --</p> <p>22 Q Look, Man, you don't --</p> <p>23 A If you'll let me finish --</p> <p>24 Q No, hold on.</p> <p>25 A -- I'll finish.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q You're -- okay. This deposition is not going 2 to go anywhere if you keep impugning my motives and my 3 questions. That's not your job, and I'm -- and we're 4 not going to have anymore of it. You answer questions. 5 That's what your job is. If I have something -- if 6 there's something wrong with my question, you can point 7 that out, okay?</p> <p>8 MR. STUKENBERG: And that's what he's 9 doing.</p> <p>10 MR. MOULTON: And I'm -- and --</p> <p>11 MR. STUKENBERG: He's answering --</p> <p>12 MR. MOULTON: -- I'm not trying --</p> <p>13 MR. STUKENBERG: -- questions.</p> <p>14 MR. MOULTON: No. I'm not -- I don't -- 15 I'm not -- I'm not -- I'm just trying to understand 16 this.</p> <p>17 Q (By Mr. Moulton) Let's back up, okay? Mammoth 18 Energy, Inc., has a group of shared resources people 19 that manage the sweeping of the money. Yes or no?</p> <p>20 A You're parsing my testimony. I said Mammoth 21 Energy, Inc., has employees. Some of those employees 22 provide shared services to other legal entities.</p> <p>23 Q What does that mean?</p> <p>24 A That means Mammoth Energy, Inc., has employees 25 that provide shared services to other legal entities</p>	<p style="text-align: right;">Page 32</p> <p>1 Q -- Energy, Inc., the shared resources. There 2 are folks in that shared resources that are providing 3 services for Higher Power as well as others, correct?</p> <p>4 A That is correct.</p> <p>5 Q Okay. And those services will 6 include treasury services, correct?</p> <p>7 A Among others, yes.</p> <p>8 Q And insurance, correct?</p> <p>9 A Yes.</p> <p>10 Q And HR services, correct?</p> <p>11 A Yes.</p> <p>12 Q As far as HR services go, is Jeff Beagle one 13 of those people?</p> <p>14 A Jeff Beagle would be employed by Mammoth 15 Energy, Inc., yes.</p> <p>16 Q Who are the -- who are the folks that would 17 have worked with Higher Power for the treasury shared 18 services from Mammoth Energy, Inc.?</p> <p>19 A From Mammoth Energy, Inc., I am an employee of 20 Mammoth Energy, Inc. My W-2 comes from Mammoth Energy, 21 Inc. Bill Short would have provided some treasury 22 services from Mammoth Energy, Inc., to other legal 23 entities.</p> <p>24 Q So for Higher Power to meet its first payroll, 25 did it utilize these shared services?</p>
<p style="text-align: right;">Page 31</p> <p>1 including treasury, insurance, consulting on matters 2 such as HR, payroll, IT, back-office type services.</p> <p>3 Q Okay. These employees that are providing the 4 shared services, what does it mean to provide a shared 5 service?</p> <p>6 A It means that those employees are providing 7 services to more than one legal entity, for which they 8 charge those legal entities.</p> <p>9 Q Okay. That would include then folks that are 10 shared services -- that are providing services for 11 Higher Power?</p> <p>12 A Higher Power, amongst other legal entities --</p> <p>13 Q Okay.</p> <p>14 A -- would be the recipient of --</p> <p>15 Q And I realize there's a whole -- we're talking 16 about a huge conglomerate of companies, and I'm not 17 asking about them right now. I'm asking --</p> <p>18 A I'm asking to speak without you talking over 19 the top of my answer.</p> <p>20 Q Yeah. Well, we're going to be here all day if 21 you just keep on adding stuff that we're not talking 22 about, okay? So I want to know a simple question. With 23 the -- can we call it MEI, Mammoth Energy, Inc.?</p> <p>24 Mammoth --</p> <p>25 A Sure.</p>	<p style="text-align: right;">Page 33</p> <p>1 A To -- to meet its first payroll is not the 2 correct connotation. So we've already gone through the 3 treasury management service. The cash, whether it for 4 payroll or for vendor disbursements, would routinely be 5 requested by Higher Power; and then that would be sent 6 to Mammoth Energy, Inc. Mammoth Energy, Inc., as part 7 of its shared services, would manage that treasury 8 function.</p> <p>9 Q Now, regarding Higher Power with the workers 10 on the island in Puerto Rico, okay? We have workers 11 that are using all kinds of trucks, equipment, you know, 12 all -- all sorts of things that they need to be able to 13 restore the power. Can you give me a brief overview of 14 what equipment that was that they were using?</p> <p>15 A In the context of -- of Higher Power?</p> <p>16 Q Yes, sir, Higher Power.</p> <p>17 A Their equipment would consist of bucket 18 trucks, pressure diggers, from time to time, brush 19 clearing equipment such as dozers, pole trailers, pickup 20 trucks, as well as ancillary support equipment.</p> <p>21 Q Do you know who -- which entity actually owned 22 the equipment you just mentioned?</p> <p>23 A Higher Power Electric had their own equipment 24 in Puerto Rico. Higher Power also leased equipment to 25 perform some services in Puerto Rico.</p>

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<p>1 Q Who would they lease to?</p> <p>2 A From.</p> <p>3 Q Oh, lease from. Who would they lease from?</p> <p>4 A Higher Power likely had some leases from</p> <p>5 various rental companies as well as there -- there may</p> <p>6 have been some leases from either Cobra Acquisitions or</p> <p>7 from 5 Star Electric.</p> <p>8 Q Are you aware of workers for Higher Power in</p> <p>9 Puerto Rico taking company logos, specifically Cobra</p> <p>10 logos, and putting them over Higher Power logos and</p> <p>11 5 Star logos? Have you heard of that?</p> <p>12 A I have not.</p> <p>13 Q Okay. Do you have an opinion either way about</p> <p>14 whether or not that would be true?</p> <p>15 A I have --</p> <p>16 MR. STUKENBERG: Objection, form.</p> <p>17 A I have no opinion. I'm -- I'm not aware of</p> <p>18 that instance.</p> <p>19 Q (By Mr. Moulton) Okay.</p> <p>20 A But to -- to the extent that there were</p> <p>21 intercompany leases relative to equipment, there very</p> <p>22 possibly could have been new logos placed on -- on some</p> <p>23 equipment to reflect the entity leasing the equipment.</p> <p>24 Q Mammoth Energy Services, Inc., provides</p> <p>25 employee benefits for the plaintiffs, correct?</p>	<p>1 A The logo is Mammoth Energy Services, Inc.</p> <p>2 Q In this benefits guide on 854, can you read to</p> <p>3 me who it's addressed to?</p> <p>4 A Are you talking about the -- the first line</p> <p>5 there?</p> <p>6 Q Yeah. Who -- who -- who is this -- this</p> <p>7 document, this employee benefits, who is it addressed</p> <p>8 to? Maybe it doesn't say on here. Maybe it's -- yeah,</p> <p>9 it doesn't say on here, I guess. I thought it did, but</p> <p>10 could you tell me who it's addressed to?</p> <p>11 A I don't see that it's addressed specifically</p> <p>12 to anyone.</p> <p>13 Q Okay. Well, it was sent by Jeff Beagle,</p> <p>14 right?</p> <p>15 A That's correct.</p> <p>16 Q And he sent it to himself? You see that?</p> <p>17 A Yes, sir.</p> <p>18 Q Okay. But this is a document that gets</p> <p>19 distributed to workers like employees of Higher Power</p> <p>20 for instance, right?</p> <p>21 A I believe that's a presumption.</p> <p>22 Q Do you know?</p> <p>23 A I can't tell the recipients based on the --</p> <p>24 the line that you've shown.</p> <p>25 Q Okay. Well, do you have knowledge of this</p>
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<p>1 A Mammoth is -- Mammoth Energy Services, Inc.,</p> <p>2 and its subsidiaries have employee benefits underneath a</p> <p>3 multiemployer benefit plan.</p> <p>4 (Plaintiffs' Exhibit 156 marked.)</p> <p>5 Q (By Mr. Moulton) I'm going to show you what's</p> <p>6 been labeled as -- or numbered as Plaintiff's Exhibit</p> <p>7 50 -- 156. We have an email here from Jeff Beagle dated</p> <p>8 November 6th -- November 6th, 2017.</p> <p>9 Do you see it?</p> <p>10 A Yes, sir.</p> <p>11 Q Okay. And this is an email about 2018</p> <p>12 benefits open enrollment, correct?</p> <p>13 A Yes, sir.</p> <p>14 Q So for -- Mammoth -- what -- for what's -- for</p> <p>15 what entities does Mammoth Energy provide the -- the</p> <p>16 employee benefits?</p> <p>17 A Each one of the legal entities provide their</p> <p>18 own benefits, as I mentioned, through a multiemployer</p> <p>19 plan. So there are approximately 53 legal entities.</p> <p>20 Some of which have employees and benefits, some of which</p> <p>21 do not.</p> <p>22 Q Okay. So on the page here that's been Bates</p> <p>23 numbered 853 in Exhibit 156, what's the name of the</p> <p>24 company above the "2018 Employee Benefits Guide"? Can</p> <p>25 you read that for me?</p>	<p>1 document being sent to the employees of Higher Power?</p> <p>2 A Very possibly could have been sent to the</p> <p>3 employees of -- of Higher Power as part of the</p> <p>4 multiemployer benefit plan. That's correct, yes.</p> <p>5 Q Okay.</p> <p>6 All right. So on Page 855 in this</p> <p>7 exhibit, talks about eligibility. It says, "When am I</p> <p>8 eligible for coverage? Your benefits are effective the</p> <p>9 first of the month following your date of hire. You</p> <p>10 must be a full-time employee working 30 or more hours</p> <p>11 per week."</p> <p>12 Do you agree with that?</p> <p>13 A That's what it says, yes.</p> <p>14 Q All right. Where on this document does it say</p> <p>15 Higher Power, 5 Star, or any of the other 53 companies?</p> <p>16 A I haven't flipped through the entire document.</p> <p>17 Q Well, on this page does it say which entity</p> <p>18 you had to be an employee of?</p> <p>19 A It says you have to be an employee. This</p> <p>20 would have been pushed out through -- presumably through</p> <p>21 Paycom, it appears, which is the HR/IS provider for</p> <p>22 which each one of the employees would log in to -- to</p> <p>23 their specific account. They would make the elections.</p> <p>24 Depending on their elections, then their employer --</p> <p>25 which in your example, Higher Power -- Higher Power</p>

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<p style="text-align: right;">Page 38</p> <p>1 would withhold any premiums from their -- that 2 employee's payroll. 3 Q All right. So Mammoth Energy -- Mammoth 4 Energy's employee benefit plan includes all the services 5 here on Page 856 in Exhibit 156, correct? 6 MR. STUKENBERG: Can you repeat that? 7 Sorry. I missed it. Would you mind repeating it? 8 Q (By Mr. Moulton) So Mammoth Energy's benefits 9 plan includes all the services right here on Page 856 in 10 Exhibit 156, correct? 11 MR. STUKENBERG: Objection, form. 12 A Mammoth Energy Services, Inc., and the 13 employers that are part of this benefit plan, all of 14 those legal entities under this multiemployer plan 15 offered the benefits outlined on this page for the 2018 16 plan year. Those offerings were from each of those 17 employers inside of that multiemployer plan. 18 Q (By Mr. Moulton) And I realize you say that 19 now, but this document doesn't say that. 20 MR. STUKENBERG: Objection, form. 21 Q (By Mr. Moulton) It says it's Mammoth Energy 22 Services, Inc., as we've already established, right? 23 A We've already established it's a multiemployer 24 plan, and the offerings were from those employers in 25 that multiemployer plan to their employees.</p>	<p style="text-align: right;">Page 40</p> <p>1 Energy Services, Inc., does, in fact, not have any 2 employees. There are no employees that receive a W-2 3 from Mammoth Energy Services, Inc., or that ever have 4 received a W-2 from Mammoth Energy Services, Inc. 5 Q So does Mammoth Energy Services, Inc., own 6 equipment or not? 7 A Mammoth Energy Services, Inc., does not own 8 any equipment. 9 Q Okay. 10 (Plaintiffs' Exhibit 157 marked.) 11 Q (By Mr. Moulton) All right. We're going to 12 show you Exhibit 157. Have you seen this letter before? 13 A I don't recall seeing this particular letter, 14 no, sir. 15 Q If Mammoth Energy has no employees, why does 16 it write to its employees? 17 MR. STUKENBERG: Objection, form. 18 A You're mischaracterizing my testimony. My 19 testimony was that Mammoth Energy Services, Inc., 20 doesn't have any employees. I've already testified that 21 Mammoth Energy, Inc., has employees and performs shared 22 services for other legal entities. 23 Q (By Mr. Moulton) Okay. So Mr. Darrell Thomas, 24 the second page of this exhibit, his W-2 employer is 25 Higher Power Electrical, LLC.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q We're -- I mean, we're scrolling through this 2 document and I have yet to see any of these other 53 3 companies on here. I mean, you tell me when you see it. 4 Do you see it? 5 A As fast as you flipped through there, I 6 couldn't see a lot. It's a multiemployer plan, and each 7 one of those employers offer the benefits outlined for 8 the 2018 plan year. 9 Q Okay. So it's your testimony that the Mammoth 10 Energy Services, Inc., 2018 Employee Benefits Guide is 11 actually another company's benefits guide? 12 MR. STUKENBERG: Objection. That 13 mischaracterizes his testimony. 14 A That's not at all what I testified to. 15 Q (By Mr. Moulton) Okay. So it is Mammoth 16 Energy Services, Inc.'s benefit guide? 17 A This is a benefit guide for a multiemployer 18 plan. 19 Q If Mammoth -- so let me just make sure. 20 You've -- you kind of voluntarily offered that Mammoth 21 Energy Services, Inc., doesn't have any employees. It 22 doesn't own any equipment. Did -- is that what you 23 said? 24 A I don't believe I said anything about Mammoth 25 Energy Services, Inc., and their equipment. Mammoth</p>	<p style="text-align: right;">Page 41</p> <p>1 Do you see that? 2 A I see that. 3 Q Okay. Why does he get a letter saying "Dear 4 Mammoth Energy Employees"? 5 A I believe this is addressed to probably 6 multiple different employers. Mammoth Energy is not a 7 legal -- Mammoth Energy is not a legal name in this 8 document. 9 Q Okay. So which Mammoth Energy company sent 10 this letter? 11 A Well, there's -- that's not a legal name 12 that's in this document. 13 Q Right. 14 A We've already testified that -- 15 Q Not we, you, but anyways go ahead. 16 A Appreciate the context there. 17 Mammoth Energy, Inc., provides shared 18 services to -- to other legal entities. 19 Q Okay. My -- I have a real simple question. 20 On the face of this document, Plaintiff's Exhibit 157, 21 you can't tell me which Mammoth Energy entity sent this 22 letter? 23 A There's not a legal name on this letter. 24 Q That's -- right. So -- but -- 25 A But I can tell you --</p>

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<p>1 Q Go ahead.</p> <p>2 A -- that Mammoth Energy Services, Inc., has no</p> <p>3 employees, has -- has no shared services function. So</p> <p>4 to the extent that there's a communication regarding the</p> <p>5 loose legal term of, quote, unquote, Mammoth, that would</p> <p>6 be from a Mammoth Energy, Inc., employee --</p> <p>7 Q All right.</p> <p>8 A -- as part of that shared services function</p> <p>9 that Mammoth Energy, Inc., employees perform for other</p> <p>10 entities.</p> <p>11 Q So this loose language was written by a</p> <p>12 Mammoth company but certainly not by one of the</p> <p>13 plaintiffs, correct?</p> <p>14 A This communication was a cover letter that was</p> <p>15 sent that outlines the employee, in this instance, their</p> <p>16 legal employer --</p> <p>17 Q All right.</p> <p>18 A -- in Box 2.</p> <p>19 Q So the -- what I'm just -- what I'm trying to</p> <p>20 just pin down is just want to make sure that this loose</p> <p>21 language you've referred to is the fault of someone in a</p> <p>22 Mammoth Energy company, like Mammoth Energy, Inc., or</p> <p>23 Mammoth Energy Services, Inc., but one of them, correct?</p> <p>24 A Mammoth Energy Services, Inc., has no</p> <p>25 employees. So it has no ability to communicate. So to</p>	<p>1 the only legal entity that would be able to push that</p> <p>2 out.</p> <p>3 Q And in that legal entity, there's only three</p> <p>4 people that could have sent it, right?</p> <p>5 A That's not what I said.</p> <p>6 Q Yes or no?</p> <p>7 A That's not what I said.</p> <p>8 Q Well, how many people could have sent it?</p> <p>9 A There are three people inside of Mammoth</p> <p>10 Energy Services, Inc. --</p> <p>11 Q Okay.</p> <p>12 A -- that have officer roles. You said Mammoth</p> <p>13 Energy, Inc. You're conflating two different legal</p> <p>14 entities and --</p> <p>15 Q I thought you were --</p> <p>16 A -- that's incorrect.</p> <p>17 Q That's fine.</p> <p>18 A That's procedurally incorrect.</p> <p>19 Q I hear you. I just thought you said -- I just</p> <p>20 got the name wrong. So who sent this letter?</p> <p>21 A I can't tell from this who sent this letter,</p> <p>22 but it wasn't any of the three individuals that have</p> <p>23 officer roles at Mammoth Energy Services, Inc.</p> <p>24 (Plaintiffs' Exhibit 158 marked.)</p> <p>25 Q (By Mr. Moulton) All right. I'm going to show</p>
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<p>1 the -- to the extent you're trying to say that Mammoth</p> <p>2 Energy Services, Inc., sent this communication, that's</p> <p>3 not physically possible. There are three individuals</p> <p>4 that have an officer role in Mammoth Energy, Inc., and</p> <p>5 none of those three individuals sent this out.</p> <p>6 Q Okay. So -- so you're confident then that</p> <p>7 this was sent out by Mammoth Energy, Inc.?</p> <p>8 A There is not a legal entity --</p> <p>9 Q Well, who --</p> <p>10 A -- on here.</p> <p>11 Q -- else could it be?</p> <p>12 A Can I finish my --</p> <p>13 Q Yeah.</p> <p>14 A -- answers, or are you going to talk over me</p> <p>15 all day?</p> <p>16 Q Who else could it be? Besides Mammoth Energy,</p> <p>17 Inc., who else could it be?</p> <p>18 A Mammoth Energy, Inc., is the only entity that</p> <p>19 provides shared services to other entities across the</p> <p>20 portfolio.</p> <p>21 Q So --</p> <p>22 A So --</p> <p>23 Q -- no one else?</p> <p>24 A -- to the extent that Mammoth is usely -- used</p> <p>25 in this communication, Mammoth Energy, Inc., would be</p>	<p>1 you Exhibit 158. Exhibit 158 is a letter from -- or to</p> <p>2 Mammoth Energy about errors in W-2s, correct?</p> <p>3 A Appears to be, yes.</p> <p>4 Q Okay. And it actually -- it's informing these</p> <p>5 folks that because there's been a error with their W-2,</p> <p>6 that they can get help dealing with their IRS issues by</p> <p>7 going with this lawyer, Allison Harvey of McAfee &amp; Taft,</p> <p>8 correct?</p> <p>9 A It's a general statement of the context.</p> <p>10 Q Is that true?</p> <p>11 A I've said you've made a generalized statement.</p> <p>12 Q Is it true or no? Do you agree with it?</p> <p>13 A Do I agree that it's a letter to wages earned,</p> <p>14 for -- in this instance, Higher Power Electrical to</p> <p>15 employees of Higher Power to -- that they could reach</p> <p>16 out for help from McAfee &amp; Taft, yes, that's a</p> <p>17 generalized statement.</p> <p>18 Q Okay. So who paid for the legal services to</p> <p>19 have folks get their W-2s paid -- fixed?</p> <p>20 A In this instance, Paycom.</p> <p>21 Q Paycom. Is -- how does Paycom -- how does it</p> <p>22 fit into the Mammoth empire?</p> <p>23 A I don't know what the context of the "Mammoth</p> <p>24 empire" is.</p> <p>25 Q Is Paycom a subsidiary?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A No, sir.</p> <p>2 Q Okay. Who -- is Paycom related at all to</p> <p>3 Mammoth or Cobra or any of the companies we're talking</p> <p>4 about?</p> <p>5 MR. STUKENBERG: Objection, form.</p> <p>6 A Paycom is a publically traded HR/IS provider.</p> <p>7 Q (By Mr. Moulton) Okay.</p> <p>8 A So to the extent you're conflating ownership,</p> <p>9 there is no cross-ownership. Paycom is a service</p> <p>10 provider to Mammoth Energy, Inc., as well as other</p> <p>11 subsidiaries owned inside of the broader Mammoth</p> <p>12 portfolio.</p> <p>13 Q Why would Mammoth Energy write folks that</p> <p>14 worked for Higher Power about their W-2 with Higher</p> <p>15 Power? Why wouldn't it come from Higher Power?</p> <p>16 MR. STUKENBERG: Objection, the letter is</p> <p>17 from Paycom.</p> <p>18 MR. MOULTON: No, it --</p> <p>19 A This -- this letter is on Paycom letterhead</p> <p>20 and sent out by Paycom, not by Mammoth Energy. So to</p> <p>21 try to intertwine a letter from Mammoth when it clearly</p> <p>22 came from Paycom is -- is incorrect.</p> <p>23 Q (By Mr. Moulton) Paycom is just a service.</p> <p>24 A Paycom sent out this letter.</p> <p>25 Q Paycom sent out the letter because someone in</p>	<p style="text-align: right;">Page 48</p> <p>1 A In regards to a Mammoth Energy, Inc., entity</p> <p>2 or other subsidiary of Mammoth Energy Partners, LLC,</p> <p>3 none of those entities have compensated Paycom in</p> <p>4 regards to charges incurred by Paycom for McAfee &amp; Taft.</p> <p>5 Q So the -- the screwup with the W-2s, was it</p> <p>6 Paycom's fault?</p> <p>7 A As I mentioned, there was an error in</p> <p>8 reporting that was Paycom's fault for which Paycom is</p> <p>9 incurring the fees of McAfee &amp; Taft.</p> <p>10 Q So the -- the mistake that Paycom made wasn't</p> <p>11 due to, well, inadequate or -- or incorrect reporting by</p> <p>12 any of the Mammoth companies, correct?</p> <p>13 A The characterization of reporting by Mammoth</p> <p>14 companies is technically loose. So each one of the</p> <p>15 legal entities would input their own payroll and report</p> <p>16 information to Paycom through their own accounts. The</p> <p>17 reporting issues incurred by Paycom and the errors were</p> <p>18 Paycom's fault. They took responsibility for it, and</p> <p>19 Paycom sent this letter out.</p> <p>20 (Plaintiffs' Exhibit 159 marked.)</p> <p>21 Q (By Mr. Moulton) Plaintiff's Exhibit 159.</p> <p>22 We've got the medical insurance card for Don Wimberley,</p> <p>23 who's an employee of Higher Power, correct?</p> <p>24 A I'd have to look at Mr. Wimberley's employee</p> <p>25 file to find his legal employer. We've already covered</p>
<p style="text-align: right;">Page 47</p> <p>1 Mammoth Energy told to send this letter out, right?</p> <p>2 A No, sir.</p> <p>3 Q Paycom, on its own accord, sent out this</p> <p>4 letter?</p> <p>5 A Paycom sent out this letter.</p> <p>6 Q Without any input from Mammoth?</p> <p>7 A The input, if any, would have been between</p> <p>8 Mammoth Energy, Inc., as shared service provider, to</p> <p>9 Paycom, relative to issues that Paycom had as a service</p> <p>10 provider, relative to reporting for Higher Power</p> <p>11 Electrical as well as other entities. This letter came</p> <p>12 clearly from Paycom.</p> <p>13 Q Right. But the initiation came from Mammoth</p> <p>14 Energy, Inc.?</p> <p>15 A The initiation came from Paycom due to errors</p> <p>16 associated with reporting of Puerto Rico wages that were</p> <p>17 made by Paycom.</p> <p>18 Q Allison Harvey, who's paying her bills?</p> <p>19 A Paycom.</p> <p>20 Q Who's paying Paycom for those?</p> <p>21 A Paycom is paying Allison Harvey vis-a-vis</p> <p>22 McAfee &amp; Taft for these services.</p> <p>23 Q So Mammoth Energy has not contributed -- or</p> <p>24 any Mammoth Energy companies or affiliates have not</p> <p>25 contributed any money to that?</p>	<p style="text-align: right;">Page 49</p> <p>1 that the benefits are part of a multiemployer plan.</p> <p>2 Q So the -- the company on his health insurance</p> <p>3 card is Mammoth Energy Services, Inc., correct?</p> <p>4 A The logo on his card and the name on it, as</p> <p>5 part of the multiemployer plan, the plan holder is</p> <p>6 Mammoth Energy Services. Again, it's a multiemployer</p> <p>7 plan. We've covered that ad nauseam.</p> <p>8 (Plaintiffs' Exhibit 160 marked.)</p> <p>9 Q (By Mr. Moulton) All right. So the -- let's</p> <p>10 talk about his 401(k). Darrell Thomas' 401(k)</p> <p>11 statement, Plaintiff's Exhibit 160. We see not Higher</p> <p>12 Power at the top but it's from Mammoth Energy Partners,</p> <p>13 LP.</p> <p>14 Do you see that?</p> <p>15 A Again, that's a multiemployer plan.</p> <p>16 Q So now it's Mammoth Energy Partners, LP, that</p> <p>17 has the multiemployer plan, or is it Mammoth Energy</p> <p>18 Services, Inc., that has the multiemployer plan?</p> <p>19 MR. STUKENBERG: Which -- which</p> <p>20 multiemployer plan are you talking about, the 401(k) or</p> <p>21 the medical?</p> <p>22 MR. MOULTON: Let's let the witness</p> <p>23 clarify. I'm obviously --</p> <p>24 MR. STUKENBERG: Sure.</p> <p>25 MR. MOULTON: -- ignorant to this.</p>

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<p style="text-align: right;">Page 50</p> <p>1 Q (By Mr. Moulton) So tell me -- tell me what 2 the answer is.</p> <p>3 A For the 401(k) plan, it's a multiemployer plan 4 that -- this one is sponsored by Mammoth Energy 5 Partners.</p> <p>6 (Plaintiffs' Exhibit 161 marked.)</p> <p>7 Q (By Mr. Moulton) We're going to look at 8 Exhibit 161, which is an email about payroll. So it 9 involves Jeff Beagle, Bill Short, Samantha Nall, 10 Alexander Kalman, Missy Davis, and Shelly Wheeler. 11 We've covered before that Bill Short and Jeff Beagle are 12 part of the shared services with Mammoth Energy, Inc., 13 correct?</p> <p>14 A Yes, sir.</p> <p>15 Q Okay. And this -- this email chain is about 16 making sure the entities working in Puerto Rico have the 17 funds they need to make the first payroll, correct?</p> <p>18 A This email appears to be a -- a 19 treasury-related email, yes.</p> <p>20 Q So the -- the first email here, there's some 21 estimates here. It looks like Higher Power is going to 22 need almost \$4 million.</p> <p>23 Do you agree with that?</p> <p>24 A Yes, sir.</p> <p>25 Q Okay. And 5 Star is going to need about</p>	<p style="text-align: right;">Page 52</p> <p>1 Cobra Energy could request funds through that treasury 2 function; but that cash would be provided by Mammoth 3 Energy Partners, not Mammoth Energy, Inc.</p> <p>4 Q And that's the same process for Higher Power 5 and for -- and for 5 Star?</p> <p>6 A That is correct.</p> <p>7 Q So the -- the actual funds come from Mammoth 8 Energy Partners?</p> <p>9 A Mammoth Energy Partners would both pull and 10 push cash through that treasury function to subsidiaries 11 of Mammoth Energy Partners.</p> <p>12 Q And Mammoth Energy Partners is a subsidiary of 13 Mammoth Energy Services, Inc., correct?</p> <p>14 A Yes, sir.</p> <p>15 Q Okay. Who's the CEO of Mammoth Energy 16 Partners?</p> <p>17 A Arty Straehla is the CEO of Mammoth Energy 18 Partners.</p> <p>19 Q Is he also the CEO of Mammoth Energy Services, 20 Inc.?</p> <p>21 A Yes, he is.</p> <p>22 Q Okay. Who's the CFO of Mammoth Energy 23 Partners?</p> <p>24 A I am the CFO of Mammoth Energy Partners.</p> <p>25 Q And are you also the CFO of Mammoth Energy</p>
<p style="text-align: right;">Page 51</p> <p>1 \$2 million?</p> <p>2 A Yes, sir.</p> <p>3 Q Okay. And then there's a discussion here also 4 about what Cobra needs because Cobra has its own 5 employees on the island as well, correct?</p> <p>6 A That's correct.</p> <p>7 Q Okay. And so it looks like Cobra may have had 8 enough just for their 15 employees. Is -- is that what 9 this is saying?</p> <p>10 A I think in this instance it looks like Cobra 11 Energy has about 15 employees in Puerto Rico, and 12 there's an estimate in regards to Puerto Rico wages 13 versus lower 48 wages for Cobra Energy.</p> <p>14 Q Is Cobra in -- does Cobra participate in the 15 shared treasury services that we described earlier -- or 16 that you talked about earlier?</p> <p>17 A Cobra Energy, yes, would -- would be the 18 beneficiary of shared services provided by Mammoth 19 Energy, Inc.</p> <p>20 Q Okay. So that -- that would be one -- through 21 the treasury services then, whether it's for payroll or 22 for whatever Cobra would need money for, that money 23 could be swept down from Mammoth Energy, Inc., correct?</p> <p>24 A Cobra Energy -- through the treasury function, 25 among other functions provided by Mammoth Energy, Inc.,</p>	<p style="text-align: right;">Page 53</p> <p>1 Services, Inc.?</p> <p>2 A I am the CFO, secretary, and compliance 3 officer for Mammoth Energy Services, Inc.</p> <p>4 Q Okay. With Mammoth Energy Partners, do you -- 5 do you have any other roles besides CFO?</p> <p>6 A No, sir.</p> <p>7 Q Okay. Now, I think you said with Mammoth 8 Energy Services, Inc., there's only three people, 9 three -- three employees?</p> <p>10 A I believe I've testified about ten times now 11 that there are no employees of Mammoth Energy Services, 12 Inc.</p> <p>13 Q Oh, I meant -- so is it Mammoth Energy -- I 14 get confused. Mammoth Energy, Inc., without the 15 "services." Mammoth Energy, Inc., is the one that has 16 three?</p> <p>17 A No, sir.</p> <p>18 Q How many employees does MEI have?</p> <p>19 A Mammoth Energy, Inc., probably has somewhere 20 in the ZIP code of 70 to a hundred employees depending 21 on the time frame.</p> <p>22 Q Okay. During the Puerto Rico time?</p> <p>23 A I don't recall the exact number, but it would 24 have been between 70 and a hundred.</p> <p>25 Q How many -- how many employees of Mammoth</p>

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<p>1 Energy Partners?</p> <p>2 <b>A Mammoth Energy Partners does not have any</b></p> <p>3 <b>employees.</b></p> <p>4 Q Okay. So in your role as CFO, you're not an</p> <p>5 employee?</p> <p>6 <b>A I'm an officer of Mammoth Energy Partners.</b></p> <p>7 Q Okay.</p> <p>8 <b>A I'm -- I'm not -- I'm not an employee of</b></p> <p>9 <b>Mammoth Energy Partners. I'm employed by Mammoth</b></p> <p>10 <b>Energy, Inc.</b></p> <p>11 Q Do you have an ownership interest in</p> <p>12 Mammoth -- Mammoth Energy Partners?</p> <p>13 <b>A No, sir.</b></p> <p>14 Q Do you have an ownership interest in Mammoth</p> <p>15 Energy Services, Inc.?</p> <p>16 <b>A Yes, I do.</b></p> <p>17 Q What is your ownership interest?</p> <p>18 <b>A It's in public filings with the SEC.</b></p> <p>19 Q And what is it?</p> <p>20 <b>A It's roughly 325,000 shares or thereabouts.</b></p> <p>21 Q What percentage is that?</p> <p>22 <b>A It would be in the ZIP code of probably</b></p> <p>23 <b>seven-tenths of 1 percent.</b></p> <p>24 Q Do you have a -- a significant ownership of</p> <p>25 any of the companies in -- that are affiliated with</p>	<p>1 Q I'm assuming the Layton Cattle Company is a --</p> <p>2 a ranch or a farm or something?</p> <p>3 <b>A It's a ranch.</b></p> <p>4 Q Okay. And what is Mark &amp; Phil, LLC? What</p> <p>5 kind of company is that?</p> <p>6 <b>A It's an LLC.</b></p> <p>7 Q No. I mean what does it do?</p> <p>8 <b>A It is a real estate development company.</b></p> <p>9 Q And what's your ownership percentage in Mark &amp;</p> <p>10 Phil?</p> <p>11 <b>A I have a 50 percent profits interest in that</b></p> <p>12 <b>entity.</b></p> <p>13 Q Is -- what's Phil's name?</p> <p>14 <b>A Are you talking about my partner in that deal?</b></p> <p>15 Q Yeah.</p> <p>16 <b>A Phil Boevers.</b></p> <p>17 Q Boevers?</p> <p>18 <b>A Yes, sir.</b></p> <p>19 Q Is -- is Phil Boevers, has he ever worked for</p> <p>20 anybody under the Mammoth umbrella?</p> <p>21 <b>A No, sir.</b></p> <p>22 Q Okay. Do you have any relatives inside the</p> <p>23 Mammoth umbrella that work for the -- at -- for any of</p> <p>24 the companies?</p> <p>25 <b>A I have no relatives that work for Mammoth</b></p>
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<p>1 Mammoth Energy Services, Inc., as subsidiaries?</p> <p>2 MR. STUKENBERG: Objection, form.</p> <p>3 <b>A So I have an ownership in Mammoth Energy</b></p> <p>4 <b>Services, Inc.</b></p> <p>5 Q (By Mr. Moulton) Uh-huh.</p> <p>6 <b>A Mammoth Energy Services, Inc., owns Mammoth</b></p> <p>7 <b>Energy Partners, LLC. It owns all of the membership</b></p> <p>8 <b>interest in -- in that LLC. That LLC owns the interest</b></p> <p>9 <b>in a number of legal entities, approximately 53 legal</b></p> <p>10 <b>entities. I do not have any direct ownership in those</b></p> <p>11 <b>entities. My ownership interest is at Mammoth Energy</b></p> <p>12 <b>Services, Inc.</b></p> <p>13 Q Okay. And -- now, outside of the Mammoth</p> <p>14 empire, do you have any ownership interest in any other</p> <p>15 companies besides, like, normal stocks? I mean, like,</p> <p>16 as, like -- like an owner of a company.</p> <p>17 <b>A I have ownership interest in two LLCs outside</b></p> <p>18 <b>of the, quote, unquote, Mammoth umbrella.</b></p> <p>19 Q Umbrella. Okay. What are those companies?</p> <p>20 <b>A The companies outside of the Mammoth --</b></p> <p>21 <b>Q Yes, sir.</b></p> <p>22 <b>A -- umbrella?</b></p> <p>23 <b>Layton Cattle Company, LLC, is one</b></p> <p>24 <b>entity. I own a hundred percent of the interest in that</b></p> <p>25 <b>entity. I also own an interest in Mark &amp; Phil, LLC.</b></p>	<p>1 <b>Energy Services, Inc., or any of its affiliated</b></p> <p>2 <b>companies.</b></p> <p>3 (Plaintiffs' Exhibit 162 marked.)</p> <p>4 Q (By Mr. Moulton) I'm going to -- we're going</p> <p>5 to look at Plaintiff's Exhibit 162, which is another</p> <p>6 email chain; and I think you would describe this as a</p> <p>7 treasury-related email; is that correct?</p> <p>8 <b>A It appears to be part of the same chain that</b></p> <p>9 <b>you brought up earlier.</b></p> <p>10 Q Right. It's -- it's just a different branch,</p> <p>11 if you will, of the email chain that we just saw in 161;</p> <p>12 but this one is dealing with 5 Star, correct?</p> <p>13 <b>A Appears to be, yes.</b></p> <p>14 Q Okay. Is -- is this statement by Samantha</p> <p>15 Nall correct, that the current available balance in the</p> <p>16 5 Star account is 34,421 -- I'm sorry, yeah, and 53</p> <p>17 cents? "We will need 100 percent of the funds</p> <p>18 transferred to our account to be able to cover payroll";</p> <p>19 is that true?</p> <p>20 <b>A I would presume that that is true, yes.</b></p> <p>21 Q Do you know what the figure in the Higher</p> <p>22 Power account was?</p> <p>23 <b>A I do not. I don't believe that there's a</b></p> <p>24 <b>Higher Power amount on this particular email chain.</b></p> <p>25 Q There's not. And I -- and I've looked, and I</p>

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<p style="text-align: right;">Page 58</p> <p>1 don't have one. That's why I'm asking you. Do you --</p> <p>2 do you even know approximately how much money Higher</p> <p>3 Power had?</p> <p>4     <b>A</b>     I have no way of knowing the exact balance on</p> <p>5 November 28th, no, sir.</p> <p>6     <b>Q</b>     No. I mean even approximately?</p> <p>7     <b>A</b>     If you put a document in front of me, I'll be</p> <p>8 happy to --</p> <p>9     <b>Q</b>     I'm telling you --</p> <p>10    <b>A</b>     -- look at it but --</p> <p>11    <b>Q</b>     -- I don't have one. Yeah.</p> <p>12    <b>A</b>     -- in regards to off the top of my head, I</p> <p>13 don't have a specific number to give you, no, sir.</p> <p>14    <b>Q</b>     Okay. Do you -- do you know if Higher Power</p> <p>15 was in the same position as 5 Star as needing funds</p> <p>16 transferred?</p> <p>17    <b>A</b>     I don't know whether or not Higher Power</p> <p>18 needed funds. I would not be surprised, however, if --</p> <p>19 if Higher Power requested funds for -- for payroll given</p> <p>20 the -- the size of the payroll.</p> <p>21    <b>Q</b>     That would have been a request that would have</p> <p>22 been approved is what you're saying?</p> <p>23    <b>A</b>     Yes. Given that every payroll has been made,</p> <p>24 then certainly that -- there would have been funds</p> <p>25 requested and -- and funds that were pushed down from</p>	<p style="text-align: right;">Page 60</p> <p>1 Mammoth Energy Partners recognizes the need and goes --</p> <p>2 and goes ahead and does it?</p> <p>3     <b>A</b>     Mammoth Energy, Inc., has the employees that</p> <p>4 are involved in that treasury function. So via</p> <p>5 communication from either Higher Power or 5 Star to the</p> <p>6 employees at Mammoth Energy, Inc., then the Mammoth</p> <p>7 Energy, Inc., employees would process that cash movement</p> <p>8 in and out of Mammoth Energy Partners, LLC.</p> <p>9     <b>Q</b>     Okay. So there's no monitoring from MEI or</p> <p>10 MEP to make sure that subsidiaries like Higher Power or</p> <p>11 5 Star are going to have enough money?</p> <p>12    <b>A</b>     As I mentioned, the individuals at Higher</p> <p>13 Power and 5 Star communicate their needs and --</p> <p>14    <b>Q</b>     I'm asking you a different question. I want</p> <p>15 to know if there's any monitoring from -- from the</p> <p>16 perspective of MEI or MEP of these subsidiaries that</p> <p>17 they -- that are -- that are under them to see if</p> <p>18 they're going to actually -- make sure that they're</p> <p>19 going to be okay?</p> <p>20            MR. STUKENBERG: Objection, form.</p> <p>21    <b>A</b>     The -- I don't necessarily follow the -- the</p> <p>22 context of monitoring. In as much as the context of</p> <p>23 monitoring is that Mammoth Energy, Inc., employees are</p> <p>24 aware of cash balances at 5 Star and Higher Power, then</p> <p>25 that would be the case. To the extent that the context</p>
<p style="text-align: right;">Page 59</p> <p>1 Mammoth Energy Partners to -- to both Higher Power and</p> <p>2 5 Star.</p> <p>3     <b>Q</b>     So what we saw there in Exhibit 162 --</p> <p>4 actually, I want to pull it back up again. I'm sorry.</p> <p>5            In Exhibit 162, to me, it -- it looks</p> <p>6 like the process was that Bill Short -- oh, well,</p> <p>7 actually, no. Let me ask you: How -- how does it work?</p> <p>8 Like, does -- does Mammoth Energy, Inc., look at 5 Star</p> <p>9 and high power -- Higher Power to monitor things and</p> <p>10 make sure they're going to be able to have the money; or</p> <p>11 do they wait for a request to come up the chain? How</p> <p>12 does -- how does that typically work with the treasury</p> <p>13 functions, or can it be just depending on the situation?</p> <p>14    <b>A</b>     So the treasury function would be managed by</p> <p>15 individuals at Higher Power and 5 Star through</p> <p>16 communication with individuals at Mammoth Energy, Inc.,</p> <p>17 to manage cash needs and to both be able to collectively</p> <p>18 invest that cash for return, minimize interest expense,</p> <p>19 and -- and manage that -- that cash inside of the</p> <p>20 portfolio both up and down, as needed by the</p> <p>21 subsidiaries.</p> <p>22    <b>Q</b>     So if one of the -- if one of the entities,</p> <p>23 like Higher Power or 5 Star, needs cash, does -- do --</p> <p>24 is it a requirement that they actually ask for it; or</p> <p>25 are there times when either Mammoth Energy, Inc., or</p>	<p style="text-align: right;">Page 61</p> <p>1 is Mammoth Energy, Inc., somehow having all of the</p> <p>2 knowledge of Higher Power or 5 Star, I believe that to</p> <p>3 be inaccurate. The Higher Power and 5 Star employees</p> <p>4 are communicating what those needs are to Mammoth</p> <p>5 Energy, Inc.; and Mammoth Energy, Inc., is assisting</p> <p>6 them and providing that cash as requested.</p> <p>7     <b>Q</b>     (By Mr. Moulton) Okay. So -- but folks at MEI</p> <p>8 and MEP are -- are aware of -- at least at a high level</p> <p>9 of -- of how much money the -- the subsidiaries have and</p> <p>10 what potential needs they may have?</p> <p>11    <b>A</b>     That mischaracterizes what I said, first of</p> <p>12 all.</p> <p>13    <b>Q</b>     Yeah, I'm not -- and I'm not trying to</p> <p>14 characterize. I'm asking you a question, sir. Do you</p> <p>15 agree with that or no?</p> <p>16    <b>A</b>     Well, you tossed in Mammoth Energy Partners --</p> <p>17    <b>Q</b>     Okay.</p> <p>18    <b>A</b>     -- which has no employees. The Mammoth</p> <p>19 Energy, Inc., employees are aware of what the cash</p> <p>20 balances are. They're not necessarily aware of what the</p> <p>21 needs are vis-a-vis communications such as this where</p> <p>22 the entities at Higher Power and 5 Star are</p> <p>23 communicating cash needs to Mammoth Energy, Inc.</p> <p>24            (Plaintiffs' Exhibit 163 marked.)</p> <p>25    <b>Q</b>     (By Mr. Moulton) All right. We're going to</p>

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<p style="text-align: right;">Page 62</p> <p>1 look at Plaintiff's Exhibit 163.</p> <p>2 MR. MOULTON: And, yes, Will, this has</p> <p>3 been produced as Plaintiff's 871.</p> <p>4 MR. STUKENBERG: Good.</p> <p>5 MR. MOULTON: Yeah.</p> <p>6 Q (By Mr. Moulton) All right. Mr. Layton, do</p> <p>7 you recognize what this is?</p> <p>8 A Appears to be a screenshot of an employee's</p> <p>9 pay for a period of time.</p> <p>10 Q Okay. When you -- for your own pay, can you</p> <p>11 access your pay information on Paycom?</p> <p>12 A Yes, I can.</p> <p>13 Q Do you have that app on your phone?</p> <p>14 A No, sir.</p> <p>15 Q Okay. But you've seen screenshots of it for</p> <p>16 sure, haven't you?</p> <p>17 A This is the first screenshot I've -- I've seen</p> <p>18 of -- of pay records in regards to access through</p> <p>19 someone's mobile phone.</p> <p>20 Q Okay. Can you explain why when an employee</p> <p>21 of, say, Higher Power logs into Paycom to see his</p> <p>22 payroll that he sees, "Current View: Employee,</p> <p>23 Currently logged in as," his number, "Mammoth Energy"?</p> <p>24 Do you know why that is?</p> <p>25 A I believe OM062 is -- is actually an account</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. STUKENBERG: Right.</p> <p>2 Q (By Mr. Moulton) Is that what you said?</p> <p>3 A I went further and answered the question, and</p> <p>4 I'll reincorporate that testimony as my answer.</p> <p>5 Q So you're -- you're saying that Mammoth Energy</p> <p>6 is the parent code, and that's why it shows here?</p> <p>7 A OM062 is the prefix when I log in to my</p> <p>8 personal account. OM062 is just a prefix for the parent</p> <p>9 code, and I'll reincorporate my previous testimony as it</p> <p>10 relates to Mammoth Energy being the parent and that if</p> <p>11 any employee clicks through their pay stubs, it will</p> <p>12 reference the legal entity for which that employee is</p> <p>13 employed by.</p> <p>14 Q Wouldn't it be a lot easier if it -- according</p> <p>15 to you guys, if they're only employed by Higher Power</p> <p>16 that it just says "Higher Power" when they log in?</p> <p>17 MR. STUKENBERG: Objection, form, what's</p> <p>18 easier.</p> <p>19 A The employees that are employed by Higher</p> <p>20 Power have pay stubs that say Higher Power.</p> <p>21 Q (By Mr. Moulton) So the answer is no?</p> <p>22 MR. STUKENBERG: Same objection.</p> <p>23 A We've covered repeatedly multiemployer type</p> <p>24 plans as well as shared services agreements.</p> <p>25 (Plaintiffs' Exhibit 164 marked.)</p>
<p style="text-align: right;">Page 63</p> <p>1 code. So the parent code for the account with Paycom is</p> <p>2 under Mammoth Energy. If you click on any one of these</p> <p>3 pay stubs, then it will tell you exactly who this</p> <p>4 employee's employer is. In other words, it'll say</p> <p>5 Higher Power, 5 Star, Mammoth Energy, Inc., whoever</p> <p>6 their legal employer is.</p> <p>7 MR. MOULTON: Object to that as</p> <p>8 nonresponsive.</p> <p>9 Q (By Mr. Moulton) My question is: Do you know</p> <p>10 why it says "Mammoth Energy" when they log in, like it</p> <p>11 says right here, like you can see on your screen?</p> <p>12 A I answered that.</p> <p>13 MR. STUKENBERG: Objection. He just</p> <p>14 answered that question.</p> <p>15 Q (By Mr. Moulton) Why does it say "Mammoth</p> <p>16 Energy"?</p> <p>17 A I answered that, and I'll reincorporate my</p> <p>18 testimony.</p> <p>19 Q You did not answer that question. Why does it</p> <p>20 say Mammoth -- you -- you said what they'll see if they</p> <p>21 keep clicking through the system.</p> <p>22 MR. STUKENBERG: No. He told you that's</p> <p>23 the parent code.</p> <p>24 Q (By Mr. Moulton) No. You said OM062 [sic] is</p> <p>25 the parent code.</p>	<p style="text-align: right;">Page 65</p> <p>1 Q (By Mr. Moulton) All right. We're going to go</p> <p>2 to Exhibit 164.</p> <p>3 MR. STUKENBERG: When you get to a</p> <p>4 stopping point, Dave, not -- if you want to get through</p> <p>5 this, that's fine, just a quick bathroom break whenever</p> <p>6 you get --</p> <p>7 MR. MOULTON: Yeah. We can cover --</p> <p>8 MR. STUKENBERG: -- to a good spot.</p> <p>9 MR. MOULTON: -- this one. This won't</p> <p>10 take very long.</p> <p>11 MR. STUKENBERG: Sure.</p> <p>12 MR. MOULTON: Okay.</p> <p>13 Q (By Mr. Moulton) Mr. Layton, do you -- do you</p> <p>14 recognize Plaintiff's Exhibit 164 as a Cobra PREPA</p> <p>15 contractor badge for Don Wimberley?</p> <p>16 A It's very fuzzy, but this generally looks like</p> <p>17 a badge for which various employees of Cobra Energy as</p> <p>18 well as Cobra Acquisitions subcontractors might use to</p> <p>19 access either Cobra's office location or the housing</p> <p>20 provided by Cobra Acquisitions to both its employees as</p> <p>21 well as subcontractor employees.</p> <p>22 Q Okay. So plaintiffs in this lawsuit were</p> <p>23 issued badges like this one in -- in 164, correct?</p> <p>24 A Badges like this --</p> <p>25 Q Uh-huh.</p>

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<p style="text-align: right;">Page 66</p> <p>1 A -- were issued to various employees as well as</p> <p>2 subcontractors of Cobra Acquisitions for the access I</p> <p>3 referenced earlier.</p> <p>4 Q So the answer to that is "yes"?</p> <p>5 A The answer is as I gave it.</p> <p>6 MR. MOULTON: Yeah, we can take a break.</p> <p>7 THE VIDEOGRAPHER: All right. We're off</p> <p>8 the record at 10:02 a.m.</p> <p>9 (Recess from 10:02 a.m. to 10:12 a.m.)</p> <p>10 THE VIDEOGRAPHER: All right. We're back</p> <p>11 on the record at 12 minutes after 10:00.</p> <p>12 Q (By Mr. Moulton) Mr. Layton, we talked a</p> <p>13 little earlier -- we talked a little bit earlier about</p> <p>14 Cobra getting the contract to provide electrical</p> <p>15 restoration work in Puerto Rico.</p> <p>16 Do you recall that?</p> <p>17 A Yeah; and just to be specific, there are a</p> <p>18 number of Cobra entities. Cobra Acquisitions is the</p> <p>19 legal entity that received the contract from PREPA in</p> <p>20 regards to the restoration of services, and we also</p> <p>21 talked about the second contract that Cobra Acquisitions</p> <p>22 won later in 2018.</p> <p>23 Q Right. And so which entity is the entity that</p> <p>24 would have -- would have assigned the work to Higher</p> <p>25 Power and 5 Star?</p>	<p style="text-align: right;">Page 68</p> <p>1 A Yes, sir.</p> <p>2 Q Okay. I want to direct your attention on this</p> <p>3 email chain, which I'm sure you're familiar with by now.</p> <p>4 I'm going to scroll down to the bottom, the part that I</p> <p>5 want to focus on. There's an email here from Keith</p> <p>6 Ellison to Ken Kinsey, Scott Whitsell, Robert Malcom,</p> <p>7 Steve Wolfe, Ken Godwin, and Jared Chappell.</p> <p>8 Do you see that?</p> <p>9 A Yes, sir.</p> <p>10 Q Okay. And before we get to the substance of</p> <p>11 the email, I notice with the email addresses that there</p> <p>12 are domain names.</p> <p>13 Do you see them?</p> <p>14 A Yes, sir.</p> <p>15 Q Okay. "Cobratd" that we see for Ken Kinsey,</p> <p>16 what entity is that?</p> <p>17 A "Cobratd" is -- is not a legal entity. I</p> <p>18 believe at -- at this time, Mr. Kinsey was employed by</p> <p>19 Cobra Energy.</p> <p>20 Q And Mr. Chappell, his shows</p> <p>21 "Mammothenergy.com." What entity would that be with?</p> <p>22 A Mr. Chappell would be an employee of Mammoth</p> <p>23 Energy, Inc.</p> <p>24 Q Okay. If -- who -- what companies used a</p> <p>25 Mammothenergy.com domain?</p>
<p style="text-align: right;">Page 67</p> <p>1 A Cobra Acquisitions was the legal entity that</p> <p>2 won the contract and would have assigned work to</p> <p>3 subcontractors, which included both Higher Power and</p> <p>4 5 Star.</p> <p>5 Q Isn't there also an entity called Cobra</p> <p>6 Energy?</p> <p>7 A There was an entity called Cobra Energy. That</p> <p>8 entity has since been renamed.</p> <p>9 Q To what?</p> <p>10 A Lion Power.</p> <p>11 Q Okay. At the time that -- of the restoration</p> <p>12 work in Puerto Rico, was there a Cobra Energy?</p> <p>13 A There was a -- a Cobra Energy that would have</p> <p>14 been a subcontractor to Cobra Acquisitions just like</p> <p>15 Higher Power and 5 Star.</p> <p>16 Q Okay. So Cobra Energy, 5 Star, Higher Power</p> <p>17 would all get their work from Cobra Acquisitions?</p> <p>18 A Cobra Acquisitions was the prime, yes.</p> <p>19 (Plaintiffs' Exhibit 131 marked.)</p> <p>20 Q (By Mr. Moulton) I'm going to show you an</p> <p>21 exhibit that has previously been labeled as Exhibit 131.</p> <p>22 We used this yesterday. You were present for</p> <p>23 Mr. Whitsell's deposition yesterday, correct?</p> <p>24 A Yes, I was.</p> <p>25 Q And also for Mr. Broussard's?</p>	<p style="text-align: right;">Page 69</p> <p>1 A The employees of Mammoth Energy, Inc., have</p> <p>2 Mammothenergy.com email addresses.</p> <p>3 Q Okay. Who owns the Mammothenergy.com domain?</p> <p>4 A Regards to the ownership of the domain name?</p> <p>5 Q Yeah.</p> <p>6 A I would -- I would have to request that</p> <p>7 ownership from the IT department.</p> <p>8 Q Okay. But sitting here today, you don't know</p> <p>9 if it's Mammoth Energy Services, Inc., Mammoth Energy,</p> <p>10 Inc., or Cobra or anybody?</p> <p>11 A Well, Mammoth Energy, Inc., has the domain</p> <p>12 name; and I would presume that -- that any fees incurred</p> <p>13 relative to that domain name would be paid by Mammoth</p> <p>14 Energy, Inc.</p> <p>15 Q Okay. So what is the role of Mammoth Energy</p> <p>16 Services, Inc., in the umbrella? What does it do?</p> <p>17 A Mammoth Energy Services, Inc., is the</p> <p>18 publically traded entity. It also has a revolving line</p> <p>19 of credit with a number of banks led by PNC, and that's</p> <p>20 it.</p> <p>21 Q All right. Let's go back to Keith Ellison's</p> <p>22 email here in Exhibit 131. He says: "All, We are</p> <p>23 awarded 120 day minimum contract for 250 linemen in</p> <p>24 Puerto Rico. We need 210 distribution resources, 25</p> <p>25 Transmission, and 15 Substation. And we are paying the</p>

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<p style="text-align: right;">Page 70</p> <p>1 following," and then he lists what they're paying for  2 some positions here.  3 Do you agree with Mr. Ellison's email;  4 that is --  5 MR. STUKENBERG: Object --  6 Q (By Mr. Moulton) -- do you agree that it's  7 correct?  8 MR. STUKENBERG: Objection, form.  9 A So I think to -- to give -- give context to --  10 to this email, which I think is important, this is prior  11 to the notice to proceed under the October 2017  12 contract. And Mr. Ellison is indicating that Cobra  13 Acquisitions has been awarded a contract, lists out some  14 target head-count numbers, and then lists out some  15 target pay rates. So to reiteration that a little bit,  16 this is prior to the notice to proceed and prior to the  17 hiring of any employees.  18 Q (By Mr. Moulton) The word "target" does not  19 appear in this email, correct?  20 A Nor does it have to.  21 Q I'm sorry. Does it -- does it include the  22 word "target" in his email?  23 A The -- that specific term is not in there.  24 Q Okay. The terms he was using were "per day,"  25 correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 regards to targeted earnings.  2 Q All right. That's not -- that's not what I'm  3 asking.  4 Scott Whitsell is the president of  5 5 Star, correct, at this time?  6 A Yes, sir.  7 Q Okay. And he testified yesterday that he was  8 recruiting workers to go to the island, correct?  9 A He testified that, yes, one of his job  10 responsibilities was -- was recruiting.  11 Q Do you disagree with that?  12 A I don't disagree that one of --  13 Q Okay.  14 A -- his job responsibilities was recruiting.  15 Q All right. And do -- do you agree that he  16 used this information to recruit people?  17 A He used this information as well as other  18 information and detail to recruit people.  19 Q Do you know -- can you say either way when he  20 started recruiting?  21 A He would have started recruiting, at least in  22 regards to communicating target earnings levels, about  23 the 19th to, say, the 21st or 22nd in regards to early  24 outreach to potential employees. And while he didn't  25 have all of the -- the details, he communicated target</p>
<p style="text-align: right;">Page 71</p> <p>1 A In this email in which he's communicating to  2 operational heads, yes, he's communicating per day  3 target wages.  4 Q All right. And this email gets passed on to  5 folks like Jeff Beagle, right?  6 A So Mr. Chappell passes this email along to  7 Mr. Beagle, which is important contextually because  8 Mr. Beagle would be the individual ultimately tasked for  9 establishing pay practices.  10 Q And he's with Mammoth Energy, Inc., correct?  11 A Yes, sir.  12 Q And then this gets passed also to Mr. Kalman  13 and Ken Kinsey -- or no, he was already on -- and Scott  14 Whitsell, Robert Malcom, right? See these people are  15 getting this?  16 Do you agree with that?  17 A I agree that Mr. Ellison communicates these  18 items to operational heads and to -- to Mr. Chappell,  19 who -- who was an accountant. Mr. Chappell forwards  20 this to Mr. Beagle, who was an HR resource.  21 Q Okay. And to kind of get to the point, these  22 rates were communicated -- communicated to people who  23 are responsible for recruiting workers, like Mr. Scott  24 Whitsell, correct?  25 A This is communicated to operational heads in</p>	<p style="text-align: right;">Page 73</p> <p>1 earnings and would have, you know, floated that to  2 potential employees as well as potential subcontractors.  3 Q And so would the -- a person working for him,  4 which is Missy Davis, correct?  5 A That's correct.  6 Q And so would Robert Malcom, who's the  7 president of Higher Power at the time, correct?  8 A Yes, sir.  9 Q And by the time it gets out there, there could  10 be any number of people recruiting based on what you  11 call these target rates in this email, right?  12 MR. STUKENBERG: Objection, form.  13 A There were communications from -- from these  14 individuals as -- as well as others in regards to  15 targeted earnings amounts; but in this time period  16 that -- that we've referenced, no employees were either  17 hired or onboarded.  18 Q (By Mr. Moulton) All right. But the -- but  19 the information is getting out there. I mean, it's all  20 over the internet at this point, correct?  21 A The information in regards to targeted  22 earnings is being used to -- to recruit; however, no  23 employees had been hired --  24 Q I understand.  25 A -- or onboarded.</p>

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<p style="text-align: right;">Page 74</p> <p>1 Q I understand that. That's not what I'm</p> <p>2 asking. I appreciate that. We all know that, okay? I</p> <p>3 mean, I'll accept that as true for right now from you</p> <p>4 until I find out otherwise.</p> <p>5 Now -- but by the targeted rate, you mean</p> <p>6 the rates that are shown in this email because there</p> <p>7 aren't any hourly rates that are established yet, right?</p> <p>8 A There's not even a pay practice that's</p> <p>9 established as of the date of this email.</p> <p>10 Q Okay. So you don't think it's a -- a pay</p> <p>11 practice that's being -- oh, I hear what you're saying.</p> <p>12 Y'all haven't decided on what you're going to do as far</p> <p>13 as a pay practice, correct?</p> <p>14 A There's been no determination as to pay</p> <p>15 practice at --</p> <p>16 Q All right.</p> <p>17 A -- this point in time and you'll see --</p> <p>18 Q That --</p> <p>19 A -- numerous iterations of dialogue between</p> <p>20 Mr. Beagle and Mr. Broussard, as well as others, in</p> <p>21 regards to the analysis and development of what</p> <p>22 ultimately was the pay practice.</p> <p>23 Q And what I'm asking right now though is that</p> <p>24 you agree that these rates -- and just like this from</p> <p>25 Mr. Ellison, written like this -- those were blasted out</p>	<p style="text-align: right;">Page 76</p> <p>1 actual pay plan was established? Yes --</p> <p>2 MR. STUKENBERG: Objection --</p> <p>3 Q (By Mr. Moulton) -- or no?</p> <p>4 MR. STUKENBERG: Objection, form.</p> <p>5 A This email as written here --</p> <p>6 Q (By Mr. Moulton) Uh-huh.</p> <p>7 A -- was not blasted out to anybody for</p> <p>8 recruiting purposes.</p> <p>9 Q And I'm not -- I didn't say this email, sir.</p> <p>10 I said the information in this email.</p> <p>11 A You said just like this email, and this email</p> <p>12 was not blasted out for recruiting purposes.</p> <p>13 Q Okay. So the -- the rates that Mr. Ellison</p> <p>14 has listed in this email, were they shared with people</p> <p>15 before the pay plan was established or no?</p> <p>16 A One, you're mischaracterizing these rates.</p> <p>17 These are -- these are target, quote, unquote, rates.</p> <p>18 Q All right. You're being --</p> <p>19 A Were these targeted --</p> <p>20 Q You're being completely evasive.</p> <p>21 This -- is --</p> <p>22 MR. STUKENBERG: Let him -- let him --</p> <p>23 MR. MOULTON: No. Hold on.</p> <p>24 MR. STUKENBERG: Let him finish his</p> <p>25 answer.</p>
<p style="text-align: right;">Page 75</p> <p>1 to lots of people before the pay practice was actually</p> <p>2 established?</p> <p>3 MR. STUKENBERG: Objection, form.</p> <p>4 A I believe that mischaracterizes what I've</p> <p>5 testified to.</p> <p>6 Q (By Mr. Moulton) No. I'm asking do you agree</p> <p>7 with that statement or no?</p> <p>8 MR. STUKENBERG: Same objection.</p> <p>9 A And I'll reincorporate my previous testimony.</p> <p>10 Q (By Mr. Moulton) So you do agree with that</p> <p>11 statement, yes?</p> <p>12 MR. STUKENBERG: Same objection.</p> <p>13 A That's not what I said. I reincorporated my</p> <p>14 previous answers --</p> <p>15 Q (By Mr. Moulton) Yeah. You don't --</p> <p>16 A -- to the same question.</p> <p>17 Q (By Mr. Moulton) That's -- it's not the same</p> <p>18 question. It's not the same question. You can't keep</p> <p>19 referring back to some testimony about a different</p> <p>20 question. That's not what I'm asking you, and the way</p> <p>21 this works is you answer my questions. So just please</p> <p>22 answer this question.</p> <p>23 Do you know or not whether or not the</p> <p>24 information just like in this email was blasted out to</p> <p>25 all sorts of people for recruiting efforts before the</p>	<p style="text-align: right;">Page 77</p> <p>1 Q (By Mr. Moulton) Are you telling me that</p> <p>2 that's not a rate in Mr. Ellison's email? 12 -- 1400</p> <p>3 per day. Is that a rate or not?</p> <p>4 A This is not a rate in that at this point in</p> <p>5 time the pay practice was not established.</p> <p>6 Q I understand that. I'm asking --</p> <p>7 A And so --</p> <p>8 Q -- is \$1400 per day a rate?</p> <p>9 A Sir, I'd ask that you kindly --</p> <p>10 MR. STUKENBERG: Objection, form.</p> <p>11 A -- let me finish my answer.</p> <p>12 Q No. I'm asking you a simple question. Is</p> <p>13 \$1400 per day a rate or no?</p> <p>14 A \$1400 per day is a target. This email</p> <p>15 precedes any implementation --</p> <p>16 Q Not --</p> <p>17 A -- of a pay practice --</p> <p>18 MR. MOULTON: Objection, nonresponsive.</p> <p>19 Q (By Mr. Moulton) I'm not even trying to -- to</p> <p>20 get you to say otherwise. I don't care about that right</p> <p>21 now, okay? I'm asking you a simple question.</p> <p>22 Is \$1400 per day, that expression, is</p> <p>23 that a rate or no?</p> <p>24 MR. STUKENBERG: Objection, form. I</p> <p>25 don't know what you mean "is that a rate?"</p>

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<p style="text-align: right;">Page 78</p> <p>1 MR. MOULTON: Yeah, is it a rate.</p> <p>2 A I don't know what a --</p> <p>3 MR. STUKENBERG: A rate of what?</p> <p>4 A -- rate is.</p> <p>5 Q (By Mr. Moulton) Is it a pay rate?</p> <p>6 A It is a targeted amount of earnings that</p> <p>7 Mr. Ellison is communicating to a bunch of operational</p> <p>8 personnel, which is then forwarded to the HR department,</p> <p>9 which is the responsible party for establishing the pay</p> <p>10 practice. So Mr. Ellison is not establishing a pay</p> <p>11 practice in this email. He's establishing targeted</p> <p>12 earnings amounts.</p> <p>13 Q Mr. Ellison was the president of Cobra Energy</p> <p>14 at this time, correct?</p> <p>15 A At this time, yes, Mr. Ellison was the</p> <p>16 president of Cobra Energy as well as a couple of other</p> <p>17 entities.</p> <p>18 Q Was he the president of Cobra Acquisitions?</p> <p>19 A Yes, sir, he was.</p> <p>20 Q Okay. He also says, "We cover all expenses.</p> <p>21 No alcohol"; is that true?</p> <p>22 A That's what the email states, yes, sir.</p> <p>23 (Plaintiffs' Exhibit 140 marked.)</p> <p>24 Q (By Mr. Moulton) In exhibit -- that's</p> <p>25 previously been marked as Exhibit 140, that we also</p>	<p style="text-align: right;">Page 80</p> <p>1 Q Okay. Exhibit 140, you've had a chance to</p> <p>2 review it now, right?</p> <p>3 A Yes, sir.</p> <p>4 Q Okay. So I want to focus on the Question</p> <p>5 No. 2 in the November 9th email from Alexander Kalman.</p> <p>6 Do you see how there's a question there where it says,</p> <p>7 "In the same vein, can we confirm that hourly employees</p> <p>8 should only receive their day rate, and not their hourly</p> <p>9 rate in addition to their day rate correct?"</p> <p>10 Did I read that question correct?</p> <p>11 A That appears to be the -- the -- the question</p> <p>12 as stated in the email, yes.</p> <p>13 Q Right. And after that, in a different color</p> <p>14 there, is the answer from Keith and Ken, right?</p> <p>15 A The -- the answer is from Ken, presumably</p> <p>16 based on the language via a conversation with Keith.</p> <p>17 Q Okay. So the answer that -- that Ken gave is,</p> <p>18 "All hourly employees will get their PR rate only."</p> <p>19 Did I read that right?</p> <p>20 A That's what it states, yes.</p> <p>21 Q And "PR" means Puerto Rico?</p> <p>22 A Yes.</p> <p>23 Q Okay. And by the "Puerto Rico rate," we're</p> <p>24 talking about the -- the pay scale that -- that got</p> <p>25 established for Puerto Rico, correct?</p>
<p style="text-align: right;">Page 79</p> <p>1 reviewed yesterday. So you should be familiar with this</p> <p>2 by now. There's an email from Mr. Kalman that includes</p> <p>3 some input from Ken Kinsey that he inserted -- inserted</p> <p>4 into the email -- do you agree with that -- on</p> <p>5 November 9th?</p> <p>6 A Just a second. Let me get my bearings here.</p> <p>7 You're moving up and down. I can't --</p> <p>8 Q Sure. You want --</p> <p>9 A -- necessarily see what's --</p> <p>10 Q You want to --</p> <p>11 A -- going on.</p> <p>12 Q -- start at the top, or you want to start at</p> <p>13 the bottom?</p> <p>14 A I'd prefer to stop at the -- or start at the</p> <p>15 bottom if -- if possible.</p> <p>16 Q Absolutely. No problem. Just tell me when</p> <p>17 you want me to scroll up.</p> <p>18 A Okay.</p> <p>19 Q Okay. Just tell me when you want to scroll up</p> <p>20 again.</p> <p>21 A I'm good.</p> <p>22 Q Okay.</p> <p>23 A Okay.</p> <p>24 Okay.</p> <p>25 All right.</p>	<p style="text-align: right;">Page 81</p> <p>1 A We're talking about the -- the pay rate for</p> <p>2 employees. I don't know what the context of -- of pay</p> <p>3 scale necessarily means, but he's talking about the</p> <p>4 appropriate pay rate for employees.</p> <p>5 Q But specifically the Puerto Rico rates, right?</p> <p>6 A Yes, this email references employees in Puerto</p> <p>7 Rico.</p> <p>8 Q Yes.</p> <p>9 (Plaintiffs' Exhibit 165 marked.)</p> <p>10 Q (By Mr. Moulton) We're going to look at</p> <p>11 Exhibit 165. I'll start at the bottom here for</p> <p>12 Exhibit 165 and let you get familiar with it.</p> <p>13 A Okay.</p> <p>14 Q Okay. So this email is about a -- a pay</p> <p>15 structure that's been agreed to for Puerto Rico,</p> <p>16 correct?</p> <p>17 A I believe this email starts out with a</p> <p>18 discussion of salaried employees and goes into some</p> <p>19 dialogue about the pay structure for a couple of</p> <p>20 salaried employees.</p> <p>21 Q Okay. So this is not talking about pay</p> <p>22 classifications for anybody else?</p> <p>23 A I'm seeing this -- this page for the first</p> <p>24 time. My answer was about where this email started.</p> <p>25 Q And, well, I guess what -- what -- the -- the</p>

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<p style="text-align: right;">Page 82</p> <p>1 important point here is that there's an attachment  2 called "pay class.xlsx."  3 Do you see that?  4 <b>A I see that, yes.</b>  5 (Plaintiffs' Exhibit 137 marked.)  6 Q (By Mr. Moulton) Okay. So I'm -- let's go  7 ahead and look at that, pay class, which has previously  8 been introduced as Exhibit 137.  9 Is this the pay class that was referenced  10 in the email?  11 <b>A This is the -- the exhibit that's referenced</b>  12 <b>in the email.</b>  13 Q Right -- or the attachment you mean?  14 <b>A Yes.</b>  15 Q Yeah, Exhibit 137. And here we see the pay  16 rates for several positions and people, and we get down  17 to the bottom. It's just for the positions. We see,  18 like, "General Foreman, Foreman, Journeyman Lineman,  19 A Lineman, B Lineman, Operator, C Lineman/Apprentice,  20 and Groundman."  21 These are positions that would have been  22 performing electrical work in Puerto Rico, correct?  23 <b>A These are positions that -- that would have</b>  24 <b>worked in Puerto Rico, yes.</b>  25 Q All right. And we see -- over to the right,</p>	<p style="text-align: right;">Page 84</p> <p>1 Q (By Mr. Moulton) So Mr. Ellison didn't say a  2 thousand for a journey lineman?  3 <b>A Mr. Ellison communicated targeted earnings --</b>  4 Q Yes or no?  5 <b>A -- inside of his email --</b>  6 Q Did his email say a thousand for journey  7 lineman or not?  8 <b>A I believe his email referenced a targeted</b>  9 <b>earning amount for a journeyman lineman as well as other</b>  10 <b>positions.</b>  11 Q All right. So let's go back to Exhibit 131  12 and look at Mr. Ellison's email.  13 1400 for general foreman. Now, in 137,  14 oh, it's the same number.  15 Do you agree with that?  16 <b>A I agree that it's the same for that position,</b>  17 <b>yes.</b>  18 Q Right. And for the rest of them here, it's  19 the same?  20 <b>A It appears to be, yes.</b>  21 (Plaintiffs' Exhibit 139 marked.)  22 Q (By Mr. Moulton) Exhibit 139, which has been  23 previously numbered as 139, offer letter from Higher  24 Power. We see the same numbers for the under "Puerto  25 Rico Storm - Per Day" for the same positions, correct?</p>
<p style="text-align: right;">Page 83</p> <p>1 we see figures listed for their day rates, correct?  2 <b>A There is a day rate column, yes.</b>  3 Q Yes. And this is -- this agrees with the  4 email that Keith Ellison sent about what he said would  5 be paid?  6 MR. STUKENBERG: Objection, form.  7 <b>A This is not a -- I think you're</b>  8 <b>mischaracterizing Mr. Ellison's --</b>  9 Q (By Mr. Moulton) Let me try my question again.  10 <b>A Let me --</b>  11 Q These are --  12 <b>A -- finish.</b>  13 Q No, that's okay. I -- I get my question was  14 bad and I'll -- I'll give you a different question  15 because I don't -- we don't have to explain it every  16 time.  17 These aren't different rates than what  18 Mr. Ellison had in his email. Do you remember those  19 numbers?  20 MR. STUKENBERG: Objection, form.  21 <b>A Mr. Ellison did not communicate a pay</b>  22 <b>practice. What he communicated was target earnings, and</b>  23 <b>this particular attachment is in reference to these</b>  24 <b>individuals that are highlighted in yellow that are</b>  25 <b>salaried employees.</b></p>	<p style="text-align: right;">Page 85</p> <p>1 <b>A Those appear to be the -- the same targeted</b>  2 <b>earnings amounts, yes.</b>  3 (Plaintiffs' Exhibit 138 marked.)  4 Q (By Mr. Moulton) 5 Star, in what's been  5 previously marked as Exhibit 138, in their offer letter  6 has the same rates?  7 <b>A This doesn't necessarily look like an offer</b>  8 <b>letter. This looks like an invitation to an onboarding</b>  9 <b>session; but in regards to -- in regards to targeted</b>  10 <b>rates, these appear to -- to mirror the targeted rates</b>  11 <b>in other communications you've brought up.</b>  12 Q And not just mirror, they're -- they're  13 exactly the same, right?  14 <b>A I'll take your word at it. They look very</b>  15 <b>similar, yes.</b>  16 Q Okay. Now, at some point the -- the rates  17 that we've seen on these sheets were -- were used to  18 calculate an hourly rate, correct?  19 <b>A I disagree with -- with the context a little</b>  20 <b>bit. So Mr. Ellison communicated target earnings rates</b>  21 <b>through communications with HR personnel as well as</b>  22 <b>consultation with Mr. Broussard. The targeted earnings</b>  23 <b>rates were used to calculate hourly rates based on hours</b>  24 <b>and days worked, and I believe that calculation was</b>  25 <b>shared back and forth with Mr. Broussard a couple of</b></p>

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<p style="text-align: right;">Page 86</p> <p>1 times.</p> <p>2 (Plaintiffs' Exhibit 166 marked.)</p> <p>3 Q (By Mr. Moulton) All right. In Exhibit 166,</p> <p>4 you're kind of jumping the gun with me, but I think this</p> <p>5 is -- we're going to lead into that discussion in</p> <p>6 detail. But on Exhibit 166, we have an email from Jeff</p> <p>7 -- actually, I'm sorry, from Missy Davis -- she's with</p> <p>8 HR in Higher -- in 5 Star -- to Jeff Beagle, who's part</p> <p>9 of the shared services with Mammoth Energy, Inc., and</p> <p>10 also with Alexander Kalman.</p> <p>11 She's asking about how -- a mathematical</p> <p>12 explanation on the PR pay rates, correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. And specifically, how to process it</p> <p>15 because she's -- she's having to put pencil to paper,</p> <p>16 right?</p> <p>17 A She's not necessarily asking how to physically</p> <p>18 process it. She's asking for a mathematical explanation</p> <p>19 as to how the payroll for the Puerto Rico employees will</p> <p>20 be processed.</p> <p>21 Q And Jeff Beagle delivers. In his email he</p> <p>22 gives her a spreadsheet that's going to outline that for</p> <p>23 her, correct?</p> <p>24 A It appears that, yes, he sends her a -- a</p> <p>25 calculation.</p>	<p style="text-align: right;">Page 88</p> <p>1 is -- this Excel spreadsheet is Bates numbered Mammoth</p> <p>2 3292 confidential dot xlsx. That's the -- that's the</p> <p>3 name of the document.</p> <p>4 Q (By Mr. Moulton) Now, earlier you were telling</p> <p>5 me about a process for coming up with hourly rates that</p> <p>6 fit with what you call a -- the targeted rates, correct?</p> <p>7 A Generally, yes.</p> <p>8 Q All right. On this spreadsheet, those</p> <p>9 targeted rates are under the column I, "Budget Day</p> <p>10 Rate," correct?</p> <p>11 A Yes, sir.</p> <p>12 Q Okay. Do you understand how these hourly</p> <p>13 rates were figured, or do we have to walk through it?</p> <p>14 A I have an understanding, yes.</p> <p>15 Q Okay. So basically if we take the budget day</p> <p>16 rate and we multiply it by 7 and divide by 148, we'll</p> <p>17 get the hourly rate, correct?</p> <p>18 MR. STUKENBERG: Objection, form.</p> <p>19 A I believe you -- you oversimplified the -- the</p> <p>20 calculation.</p> <p>21 Q (By Mr. Moulton) All right. Let's kind of</p> <p>22 back up then. In K where I'm -- where I'm highlighting,</p> <p>23 there's a rate that says 59.12. That corresponds to a</p> <p>24 foreman, which corresponds to a budget day rate of 1250.</p> <p>25 It's all on the same row, correct?</p>
<p style="text-align: right;">Page 87</p> <p>1 Q Okay. Did you ever talk with Missy about what</p> <p>2 she felt about the calculations?</p> <p>3 A I don't recall any conversations between</p> <p>4 myself and -- and Missy in regards to the calculations.</p> <p>5 Q Okay.</p> <p>6 (Plaintiffs' Exhibit 167 marked.)</p> <p>7 Q (By Mr. Moulton) All right. So in</p> <p>8 Exhibit 167, we're going to look at it in native format</p> <p>9 because it's an Excel spreadsheet and Excel spreadsheets</p> <p>10 have formulas, which I'm sure you're familiar with,</p> <p>11 right?</p> <p>12 A Yes, sir.</p> <p>13 Q Okay. CFO, you're -- you're pretty</p> <p>14 experienced with spreadsheets. Is that fair to say?</p> <p>15 A I can operate in Excel, yes.</p> <p>16 Q Okay. So if we look at, like, cells and see</p> <p>17 what the formulas are doing, you can -- you would --</p> <p>18 you'll understand them, at least on basic ones?</p> <p>19 A Hopefully.</p> <p>20 Q Okay.</p> <p>21 All right. We're going to look at this</p> <p>22 then and like I say, we're --</p> <p>23 MR. MOULTON: I can't put a sicker</p> <p>24 necessarily on the front of it for the court reporter</p> <p>25 maybe later we'll figure out how to label it, but this</p>	<p style="text-align: right;">Page 89</p> <p>1 A Yes, sir.</p> <p>2 Q Okay. So in that cell we have 8,750, which is</p> <p>3 7 times 1,250 divided by 148, correct?</p> <p>4 A That's correct.</p> <p>5 Q Okay. So the hourly rate is determined by</p> <p>6 taking the day rate times 7 and dividing it by 148. Do</p> <p>7 you agree with me now?</p> <p>8 A That's the -- that's the day rate divided by</p> <p>9 the -- the total hours adjusted for overtime, yes.</p> <p>10 Q Right. And it's -- and in this -- in the pay</p> <p>11 plan that was established, you guys were targeting a</p> <p>12 16-hour day, right?</p> <p>13 A There was a 16-hour day that was required of</p> <p>14 employees in Puerto Rico --</p> <p>15 Q Right.</p> <p>16 A -- yes, where they were either working or on</p> <p>17 call to work.</p> <p>18 Q All right. So -- and, like, I'm not trying to</p> <p>19 get into all that right now, but just trying to</p> <p>20 understand the spreadsheet.</p> <p>21 So the target here is 7 times 16 hours is</p> <p>22 112 under the total, correct?</p> <p>23 A Yes, sir.</p> <p>24 Q Okay. And this is -- this is kind of a neat</p> <p>25 solution to make it simple for calculating your hourly</p>

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<p style="text-align: right;">Page 90</p> <p>1 rates if you ask me because what they do is they take</p> <p>2 the -- they divide that 112 into 40 and 72. You can see</p> <p>3 that there, right, on Columns E and F, right?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Okay. And then if you take your overtime</p> <p>6 hours of 72 and multiply them by one and a half, that's</p> <p>7 going to give you the overtime adjusted of a hundred and</p> <p>8 eight hours, correct?</p> <p>9 <b>A That's correct.</b></p> <p>10 Q So now you kind of normalize it and kind of</p> <p>11 say, okay, the total hours adjusted is 148, which</p> <p>12 becomes the number you're dividing by for the -- these</p> <p>13 hourly rate calculations, correct?</p> <p>14 <b>A Yes, sir.</b></p> <p>15 Q Okay. Did you prepare -- did you prepare this</p> <p>16 spreadsheet?</p> <p>17 <b>A No, sir.</b></p> <p>18 Q Do you know who did it?</p> <p>19 <b>A I believe this spreadsheet was prepared by</b></p> <p>20 <b>Mr. Beagle based on my review of the documents.</b></p> <p>21 Q Okay.</p> <p>22 All right. So the hourly rate here is --</p> <p>23 we can count -- for these -- for these budget day rates,</p> <p>24 we can get to the hourly rate figure just by multiplying</p> <p>25 it by 7 and dividing by 148, correct?</p>	<p style="text-align: right;">Page 92</p> <p>1 <b>A It's in P now, but for some reason I'm not</b></p> <p>2 <b>seeing the formula on -- on my screen.</b></p> <p>3 Q (By Mr. Moulton) Can you see it now?</p> <p>4 <b>A No, sir.</b></p> <p>5 <b>Okay. Now I've got it.</b></p> <p>6 Q Okay.</p> <p>7 Have you had a chance to look at that</p> <p>8 now?</p> <p>9 <b>A Yeah. Can I look at N again?</b></p> <p>10 <b>Okay.</b></p> <p>11 Q So do you recognize what these calculations</p> <p>12 are between N and Q?</p> <p>13 <b>A This appears to -- to be a high-level analysis</b></p> <p>14 <b>of what the pay may look like if a day rate pay practice</b></p> <p>15 <b>is established.</b></p> <p>16 Q Right. And specifically it would -- it shows</p> <p>17 how much overtime extra would have to be paid and what</p> <p>18 the total pay would have to be, correct?</p> <p>19 <b>A It shows what it would look like if a pay</b></p> <p>20 <b>practice was established to pay the day rate at the</b></p> <p>21 <b>amounts in Column I. So this is part of the analytics</b></p> <p>22 <b>and the iterative dialogue between Mr. Beagle and</b></p> <p>23 <b>Mr. Broussard.</b></p> <p>24 Q Right.</p> <p>25 Okay. So if -- if the company had</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. STUKENBERG: Objection, form --</p> <p>2 <b>A Run that through me -- run that calculation</b></p> <p>3 <b>through me again, please.</b></p> <p>4 Q (By Mr. Moulton) Yeah. For these hourly rates</p> <p>5 that are listed in Column K, which going to -- which are</p> <p>6 the hourly rates you guys used on the island, correct?</p> <p>7 We can get them -- we can calculate them by just taking</p> <p>8 the budget day rate times 7 and dividing by 148.</p> <p>9 That's what that figure is, right?</p> <p>10 <b>A Yes.</b></p> <p>11 Q Okay. Now, over here between N and Q columns,</p> <p>12 there's several numbers calculated here. Do those</p> <p>13 numbers mean anything to you?</p> <p>14 If you need to see any cell, let me know.</p> <p>15 <b>A Can I look at P?</b></p> <p>16 Q Yes, sir.</p> <p>17 MR. STAMEY: Did you freeze?</p> <p>18 Q (By Mr. Moulton) Are you not seeing P?</p> <p>19 <b>A No, sir. I'm still in N.</b></p> <p>20 Q I'll just try refreshing the screen and see</p> <p>21 what happens. Do you see it now?</p> <p>22 <b>A No, sir.</b></p> <p>23 Q All right.</p> <p>24 MR. STUKENBERG: There you go. Now</p> <p>25 you're moving.</p>	<p style="text-align: right;">Page 93</p> <p>1 adopted a pay -- a day rate plan, these calculations</p> <p>2 between N and Q are showing what -- what the payroll</p> <p>3 would -- would look like?</p> <p>4 MR. STUKENBERG: Objection, form.</p> <p>5 <b>A It shows what it would look like if the</b></p> <p>6 <b>entities established a day rate plan and if the entities</b></p> <p>7 <b>adopted the amounts in Column I in regards to day rate.</b></p> <p>8 Q (By Mr. Moulton) Okay. And what -- and you --</p> <p>9 you heard Mr. Broussard testify yesterday. Do you agree</p> <p>10 that there was a discussion between either a day rate</p> <p>11 plan or an hourly plan with him? Do you recall that?</p> <p>12 <b>A Yes, there were several discussions with</b></p> <p>13 <b>Mr. Broussard about compliant plans and structure.</b></p> <p>14 Q Right. And the -- but there was basically --</p> <p>15 basically it was narrowed down to two options. Either</p> <p>16 the company would go with a hourly plan, or it was</p> <p>17 thinking about a day rate plan. And -- and he didn't</p> <p>18 know what y'all -- what y'all went with. But do you</p> <p>19 know which one y'all went with?</p> <p>20 <b>A Mr. Broussard provided two compliant options.</b></p> <p>21 <b>One being an hourly and overtime plan. The other being</b></p> <p>22 <b>a day rate plan with overtime applied to those day</b></p> <p>23 <b>rates.</b></p> <p>24 Q Okay. And which one did the companies go</p> <p>25 with?</p>

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<p style="text-align: right;">Page 94</p> <p>1       <b>A</b>     The employers, as it relates to this matter,</p> <p>2   <b>adopted an hourly and overtime plan.</b></p> <p>3       <b>Q</b>     Okay. That's your testimony. That's what you</p> <p>4   believe?</p> <p>5       <b>A</b>     That's not only my testimony, that's what the</p> <p>6   pay records indicate.</p> <p>7       <b>Q</b>     Okay. We'll look at that in a minute.</p> <p>8               (Plaintiffs' Exhibit 151 marked.)</p> <p>9       <b>Q</b>     (By Mr. Moulton) Now, I also want to show you</p> <p>10 what's been previously marked as Exhibit 151, which was</p> <p>11 introduced by your counsel yesterday. And does</p> <p>12 Exhibit 151 reflect the final version of Cobra's pay</p> <p>13 scale?</p> <p>14       <b>A</b>     That appears to mirror the -- the hourly rates</p> <p>15 of the pay scales that were adopted by Cobra</p> <p>16 Acquisitions, Higher Power Electrical, and 5 Star.</p> <p>17       <b>Q</b>     And not Cobra?</p> <p>18       <b>A</b>     I mentioned Cobra Acquisitions.</p> <p>19       <b>Q</b>     Okay. So Cobra Acquisitions and it -- and its</p> <p>20 subsidiaries performing in -- performing work in Puerto</p> <p>21 Rico used this pay scale in Exhibit 151?</p> <p>22       <b>A</b>     To -- to clarify your -- your question, Cobra</p> <p>23 Acquisitions acquired Higher Power and 5 Star. Once</p> <p>24 the -- the Puerto Rico contract was won by Cobra</p> <p>25 Acquisitions, then Cobra Acquisitions transferred its</p>	<p style="text-align: right;">Page 96</p> <p>1 offer letter for Daniel Wood, and the first couple pages</p> <p>2 aren't signed. Let's go to the one that's signed.</p> <p>3               So Mammoth 2725 in this exhibit. Looks</p> <p>4 like his start date is going to be on July 8th, 2018,</p> <p>5 correct?</p> <p>6       <b>A</b>     Yes, sir.</p> <p>7       <b>Q</b>     Okay. And if you'll notice here, it says,</p> <p>8 "Puerto Rico Storm Rate (on island) 42.57 at 16 hours</p> <p>9 per day at \$900 per day."</p> <p>10              Do you agree with that -- that that's</p> <p>11 what that says?</p> <p>12       <b>A</b>     That's what's written in there, yes.</p> <p>13       <b>Q</b>     Yes. Okay.</p> <p>14              And then if we go back to Exhibit 151,</p> <p>15 the pay scale, that appears on there, right? Don't we</p> <p>16 see, like, for example, Class A Lineman is 900 at 42.57?</p> <p>17       <b>A</b>     It's 42.57 at 16 hours per day, which equates</p> <p>18 to \$900 per day if the employee works seven days a week</p> <p>19 and is available to work or works for 16 hours per</p> <p>20 shift.</p> <p>21       <b>Q</b>     All right. I'm so glad you clarified that</p> <p>22 because as you've -- as you pointed out, if you take 16</p> <p>23 times any of these PR storm per hour rates in</p> <p>24 Exhibit 151, you don't get the day rate, correct?</p> <p>25              MR. STUKENBERG: You mean the per day?</p>
<p style="text-align: right;">Page 95</p> <p>1 membership interest in both Higher Power and 5 Star to</p> <p>2 Cobra Energy, Inc.</p> <p>3       <b>Q</b>     So --</p> <p>4       <b>A</b>     So Cobra Acquisitions no longer had membership</p> <p>5 interest in either Higher Power or 5 Star; and thus, had</p> <p>6 no subsidiaries.</p> <p>7       <b>Q</b>     So Exhibit 151 is the pay scale that applied</p> <p>8 to the plaintiffs in this case that were working for</p> <p>9 Higher Power?</p> <p>10       <b>A</b>     In this particular matter, I don't believe</p> <p>11 Cobra Acquisitions is a defendant in this matter.</p> <p>12       <b>Q</b>     That -- I'm not asking that. I just want to</p> <p>13 know -- ignore -- I'm not even asking you about who's</p> <p>14 sticker's on top right now. These numbers, the numbers</p> <p>15 that y'all determined -- like, we just saw the</p> <p>16 spreadsheet. These are the figures in PR -- "PR Storm -</p> <p>17 Per Hour," "PR Storm - Per Day," these positions, this</p> <p>18 is the pay scale for the guys in Higher Power and 5 Star</p> <p>19 working on the island in Puerto Rico, correct?</p> <p>20       <b>A</b>     This is the hourly scale that was established</p> <p>21 for the employees of Higher Power and 5 Star.</p> <p>22       <b>Q</b>     Thank you.</p> <p>23              (Plaintiffs' Exhibit 145 marked.)</p> <p>24       <b>Q</b>     (By Mr. Moulton) Here's an exhibit previously</p> <p>25 marked as 145, Plaintiff's Exhibit 145. We have an</p>	<p style="text-align: right;">Page 97</p> <p>1       <b>Q</b>     (By Mr. Moulton) Yeah. You don't get the</p> <p>2 storm per day numbers. Do you agree with that?</p> <p>3       <b>A</b>     If you just take 16 times any of these per</p> <p>4 hour rates?</p> <p>5       <b>Q</b>     Right.</p> <p>6       <b>A</b>     No.</p> <p>7       <b>Q</b>     Right. And if -- and -- and so -- and by</p> <p>8 extension, the way I understand the payroll to have</p> <p>9 worked, be -- what y'all would do is basically pay --</p> <p>10 according to you guys, you'd pay 16 hours per day.</p> <p>11 Where I'd call it credit, you'd call it, you know -- if</p> <p>12 he works one day on the island, you're going to -- on</p> <p>13 the payroll documents, you're going to show 16 for his</p> <p>14 hours, correct?</p> <p>15       <b>A</b>     If an employee shows up for work in Puerto</p> <p>16 Rico and works and/or is available to work, then there</p> <p>17 is 16 hours recorded for that employee for the day --</p> <p>18       <b>Q</b>     Right.</p> <p>19       <b>A</b>     -- for time worked and for time on call.</p> <p>20       <b>Q</b>     Okay. And you would then take these rates and</p> <p>21 do the math for what the hourly and the overtime would</p> <p>22 be depending on the hours you were crediting, like, 16,</p> <p>23 32, 48, and so on?</p> <p>24       <b>A</b>     Well, to back up, so the -- the pay practice</p> <p>25 was these employees were hourly. They were input into</p>

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<p style="text-align: right;">Page 98</p> <p>1 the HR/IS system as hourly employees, reflected on their 2 pay stubs as hourly employees, went along with their 3 hourly rates. And based on each employee's hours worked 4 and/or hours on call, that employee's appropriate rate 5 for regular and for overtime was applied to their hours 6 worked in each pay period.</p> <p>7 MR. MOULTON: Objection, nonresponsive.</p> <p>8 Q (By Mr. Moulton) I'm -- I'm not even -- I'm 9 just trying to be real simple. Like, just -- I'm -- I'm 10 talking about the mechanics, okay? If a guy like -- 11 like we just saw, Mr. Daniel Wood. We were looking at 12 his offer letter in Exhibit 145, for example. It shows 13 his rate at 42.57 at 16 hours a day at 900, right?</p> <p>14 A His rate is 42.57, and that's exactly how he 15 was input into the HR/IS system in his hourly rate.</p> <p>16 Q Well, I mean, that's not what it says; but 17 I -- I hear you. You're saying you use the 42.57 is 18 your testimony, right?</p> <p>19 A I'm saying hourly employees were set up as 20 hourly --</p> <p>21 Q Did you use 42.57 --</p> <p>22 A -- with an hourly rate --</p> <p>23 Q -- or no for him?</p> <p>24 A Can I finish?</p> <p>25 Q You're -- I'm not asking all that. I'm asking</p>	<p style="text-align: right;">Page 100</p> <p>1 Q Yes.</p> <p>2 A Then this employee would be credited with 16 3 hours at \$42.57.</p> <p>4 Q Okay. So if in the payroll records we show 5 that when that would happen, they got paid \$900, what 6 would you say?</p> <p>7 A An example where this employee worked one day 8 at 16 hours, this employee should have been paid 16 9 hours times 42.57. If it -- if the payroll system 10 reflects something other than that, then I would 11 characterize that as an input error.</p> <p>12 Q Okay. So if there are hundreds if not 13 thousands of instances of folks being boosted up from 14 their hourly pay to their PR storm per day rate, all of 15 those are errors?</p> <p>16 MR. STUKENBERG: Objection, 17 mischaracterizes his testimony. If you want to ask him 18 about payroll records, show him the payroll records.</p> <p>19 A If you've got specific documents --</p> <p>20 Q (By Mr. Moulton) Oh, we do.</p> <p>21 A -- I'll look at them.</p> <p>22 Q We do, but I want to know what your opinion is 23 before we look at them.</p> <p>24 A I've given you my testimony on the example 25 that you gave --</p>
<p style="text-align: right;">Page 99</p> <p>1 are you using 900, or are you using 42.57?</p> <p>2 A This employee as well as all of the employees 3 that are plaintiffs were established as hourly employees 4 with hourly rates and paid regular and overtime based on 5 those hourly rates for their shifts to the extent they 6 either worked or were on call to work up to 16 hours per 7 day during this time period. If they worked over, then 8 we'd capture that and would have -- and would have paid 9 for those hours either regular or overtime.</p> <p>10 Q Are you aware of anyone ever working over 16 11 hours a day?</p> <p>12 A Based on my review of the data, I've not seen 13 anyone that's exceeded. However, we had processes in 14 place with our supervisors in order to capture any of 15 that time.</p> <p>16 Q So you're saying it just never happened?</p> <p>17 A I've not seen any reports of an employee 18 exceeding 16 hours, but we had processes in place to 19 capture any hours in excess of 16 hours per day.</p> <p>20 Q So let me ask you this: Let's take Mr. Wood's 21 rate, 42.57, and go back to the pay scale in 151. If he 22 works one day of 16 hours, what is he going to get paid?</p> <p>23 A If he works one day and one day only --</p> <p>24 Q Yes.</p> <p>25 A -- of 16 hours in any pay period?</p>	<p style="text-align: right;">Page 101</p> <p>1 Q Okay.</p> <p>2 A -- and I characterize that as an error to the 3 extent that there was something that reflected something 4 different than -- than the calculation in your example.</p> <p>5 Q Okay. Errors.</p> <p>6 Let's look at another offer letter for 7 Michael Fair, which has previously been marked as 8 Exhibit 138.</p> <p>9 That's the wrong one. Let's do -- oh, 10 no, I'm sorry. I just have the wrong exhibit number on 11 it. Okay.</p> <p>12 MR. STAMEY: So are we going with 13 Exhibit 146 or 138?</p> <p>14 MR. STUKENBERG: While you figure that 15 out, Dave, I'll be right back.</p> <p>16 MR. MOULTON: Sure. We can continue 17 without you? Is that all right?</p> <p>18 MR. STUKENBERG: If Harris can object on 19 my behalf.</p> <p>20 MR. MOULTON: Okay. (Plaintiffs' Exhibit 146 marked.)</p> <p>21 Q (By Mr. Moulton) This is 146. We used it 22 yesterday.</p> <p>23 A And we can get through your questions on this; 24 but when you get to a stopping point after your</p>

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<p style="text-align: right;">Page 102</p> <p>1 questions on this, can we take a restroom break?</p> <p>2 Q Absolutely. We had the same problem with this</p> <p>3 exhibit yesterday. It was a little fuzzy.</p> <p>4 A Yeah. It's very illegible on my screen.</p> <p>5 Q Go ahead and take your break. I'll have it up</p> <p>6 here in a second.</p> <p>7 THE VIDEOGRAPHER: All right. We're off</p> <p>8 the record at 11:03.</p> <p>9 (Recess from 11:03 a.m. to 11:12 a.m.)</p> <p>10 THE VIDEOGRAPHER: We're back on the</p> <p>11 record at 11:12.</p> <p>12 Q (By Mr. Moulton) All right. Mr. Layton, we're</p> <p>13 looking at Exhibit 146 right now. Can you see it</p> <p>14 clearly on your screen now?</p> <p>15 A Yes, sir.</p> <p>16 Q Okay. We have an offer letter for Michael</p> <p>17 Fair on May 17th, 2018, correct?</p> <p>18 A Yes, sir.</p> <p>19 Q And what it says for his "Puerto Rico Storm</p> <p>20 Rate (on island)" is 1,250 per day at \$59.12 per hour,</p> <p>21 correct?</p> <p>22 A Yes, sir.</p> <p>23 Q Okay. And that corresponds to that pay scale</p> <p>24 in 151 that we've been looking at before, right?</p> <p>25 A Yes, sir.</p>	<p style="text-align: right;">Page 104</p> <p>1 Exhibit 52 for James Tanner, start -- and the start date</p> <p>2 is May 2nd, 2018.</p> <p>3 Do you see this?</p> <p>4 A Yes, I do.</p> <p>5 Q Okay. And his rate, as stated on this -- his</p> <p>6 Puerto Rico storm rate, 16-hour paid shift on island, is</p> <p>7 \$800 per day that will be broken down hourly over 16</p> <p>8 hours daily.</p> <p>9 Do you see that?</p> <p>10 A Yes, sir.</p> <p>11 Q Okay. And this one doesn't have an hourly</p> <p>12 rate on it, correct?</p> <p>13 A No, sir.</p> <p>14 Q Do you know what a Personnel Action Form is?</p> <p>15 A Yes, sir.</p> <p>16 (Plaintiffs' Exhibit 168 marked.)</p> <p>17 Q (By Mr. Moulton) We have one, which is --</p> <p>18 well, we have a set of documents that includes a</p> <p>19 Personnel Action Form for Alan Pierson, which is</p> <p>20 Exhibit 168; and if we look not at that first one</p> <p>21 because that's after but for Puerto Rico on his</p> <p>22 Personnel Action Form, do you see how it says PR \$800</p> <p>23 per day?</p> <p>24 Do you see that?</p> <p>25 A I see that.</p>
<p style="text-align: right;">Page 103</p> <p>1 Q Okay. And that's all -- that's all we need</p> <p>2 for that. Let's go on to the next one.</p> <p>3 We have one for Carlos Benevidez here, an</p> <p>4 offer letter --</p> <p>5 MR. STUKENBERG: It hasn't come up.</p> <p>6 MR. MOULTON: Oh. Oh. You know what?</p> <p>7 That's because I need to share the right screen. We're</p> <p>8 back to normal screen sharing.</p> <p>9 (Plaintiffs' Exhibit 1 marked.)</p> <p>10 Q (By Mr. Moulton) So we have what's been</p> <p>11 previously introduced as Exhibit 1, offer letter for</p> <p>12 Carlos Benevidez dated July 1st, 2018.</p> <p>13 Do you see this?</p> <p>14 A Yes, sir.</p> <p>15 Q Okay. If we zoom in, the rate that's stated</p> <p>16 on his offer letter is \$800 per day at 37.84 per hour.</p> <p>17 Do you see that?</p> <p>18 A I do.</p> <p>19 Q Okay. And that's -- and that's a rate that</p> <p>20 we'll see on the 151, which was the -- the final pay</p> <p>21 scale that was determined, correct?</p> <p>22 A Yes.</p> <p>23 (Plaintiffs' Exhibit 52 marked.)</p> <p>24 Q (By Mr. Moulton) Looking at another example of</p> <p>25 an offer letter, which has previously been introduced as</p>	<p style="text-align: right;">Page 105</p> <p>1 Q Okay. And "PR" means "Puerto Rico," correct?</p> <p>2 A Yes, sir.</p> <p>3 Q Okay. And there's not an hourly rate</p> <p>4 established for him, right?</p> <p>5 MR. STUKENBERG: On this document.</p> <p>6 Q (By Mr. Moulton) On this document?</p> <p>7 A Not on this particular document. That would</p> <p>8 be contained in the HR/IS system.</p> <p>9 Q Okay. When -- now, you mentioned earlier that</p> <p>10 with the -- the hourly rates that were established, when</p> <p>11 the worker works a full week, they can expect then to</p> <p>12 receive those storm day rates when it's averaged out</p> <p>13 over the week, correct?</p> <p>14 MR. STUKENBERG: Objection, form.</p> <p>15 A That wasn't my exact testimony; but to the</p> <p>16 extent an employee works their hours at the hourly rates</p> <p>17 over a full week, they would get very close to those</p> <p>18 target rates. It would very likely if ever be exactly</p> <p>19 those targeted rates because of the application of</p> <p>20 regular and overtime hourly rates.</p> <p>21 Q (By Mr. Moulton) Right. It's basically</p> <p>22 because of rounding?</p> <p>23 A It's basically because of the mechanical</p> <p>24 calculation in paying employees hourly.</p> <p>25 MR. STUKENBERG: It's math.</p>

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<p style="text-align: right;">Page 106</p> <p>1 MR. MOULTON: I know, but, you know,</p> <p>2 he's --</p> <p>3 Q (By Mr. Moulton) All right. Let's go back to</p> <p>4 Exhibit 167. I don't know if you ever noticed, but in</p> <p>5 this spreadsheet -- let me go back to the hourly rates</p> <p>6 that were calculated, that 1 times 7 divided by 148,</p> <p>7 it's showing, like, on this first one, 59.12.</p> <p>8 Do you see that?</p> <p>9 A I see that.</p> <p>10 Q Okay. Now, obviously, if we see the full</p> <p>11 calculation, I mean, it's going on and on. But if you</p> <p>12 just use 59.12 and you do this "Check Figure" on L,</p> <p>13 you're going to be off by a few pennies by -- based on</p> <p>14 the application of the math you're talking about,</p> <p>15 correct?</p> <p>16 A And the math matters --</p> <p>17 Q Right. The --</p> <p>18 A -- and the mechanics matter.</p> <p>19 Q It does, and you love to say that. And I</p> <p>20 agree with you. Mechanics matter. We'll go look at</p> <p>21 mechanics.</p> <p>22 MR. STUKENBERG: Objection to the side</p> <p>23 bar.</p> <p>24 Q (By Mr. Moulton) But my point is -- is that if</p> <p>25 you use 59.12 instead of this whole number here or this</p>	<p style="text-align: right;">Page 108</p> <p>1 capture that such that the employee would be</p> <p>2 compensated.</p> <p>3 Q Have you done an analysis to see for the --</p> <p>4 when people are working in Puerto Rico how many -- like,</p> <p>5 what percentage of the time that the hours on their time</p> <p>6 sheet is not 16.00?</p> <p>7 A I've looked at a number of time sheets. Some</p> <p>8 would be less than -- than 16 hours. The majority of</p> <p>9 the time that I've seen, based on my review, is that the</p> <p>10 employees would be paid for the 16 hours that they</p> <p>11 either worked or were on call.</p> <p>12 Q So what it's going to show in the payroll</p> <p>13 records then overwhelmingly, like over 99 percent of the</p> <p>14 time, is 16.00 because they were there working or on</p> <p>15 call, correct?</p> <p>16 A That was the standard shift during the</p> <p>17 requisite time period for which employees either worked</p> <p>18 or were on call to work --</p> <p>19 Q So --</p> <p>20 A -- in Puerto Rico.</p> <p>21 Q So overwhelmingly then, in the payroll records</p> <p>22 on -- for days, it's 16.00 hours per day?</p> <p>23 A 16 hours was the hours worked and/or on call</p> <p>24 for the employees in Puerto Rico. That was the standard</p> <p>25 shift.</p>
<p style="text-align: right;">Page 107</p> <p>1 long, you know, unrounded number, the amount you</p> <p>2 calculate that he will get for the week will be slightly</p> <p>3 off of what the -- the target day rate is, correct?</p> <p>4 A In this instance 59.12 is the hourly rate.</p> <p>5 The employee works the hours. The mechanics and the</p> <p>6 math work out however they work out in regards to</p> <p>7 regular and overtime.</p> <p>8 Q And he's not going to get exactly 8750 to the</p> <p>9 dot, right? It's going to be a little off?</p> <p>10 A This employee would get whatever their</p> <p>11 calculation is for regular and overtime --</p> <p>12 Q Right. And we'll --</p> <p>13 A -- based on their hourly rate.</p> <p>14 Q Right. So at 59.12 is it 8,750; or is it</p> <p>15 8,750 and a few pennies? Do you know?</p> <p>16 A It's 59.12 times however many hours the</p> <p>17 employee works during the pay period.</p> <p>18 Q Okay. In Puerto Rico what typically happened</p> <p>19 was every day worked was credited 16 hours, correct?</p> <p>20 A In Puerto Rico what happened was that</p> <p>21 employees that showed up and either worked or were</p> <p>22 available to work on call, we recorded 16 hours per day</p> <p>23 for those employees. To the extent those employees</p> <p>24 worked more than their 16 hours, we had processes and</p> <p>25 procedures in place through the chain of command to</p>	<p style="text-align: right;">Page 109</p> <p>1 Q I mean but exactly 16.00, right?</p> <p>2 A That would be the majority of the time. There</p> <p>3 were some incidences where it would have been different</p> <p>4 than 16 hours.</p> <p>5 Q Do you know how many?</p> <p>6 A I don't have the -- the calculus on that.</p> <p>7 Q Okay. Very small minority?</p> <p>8 A Based on my review of the records, it would be</p> <p>9 a minority of the time that there would be something</p> <p>10 different than 16 hours worked or available to work for</p> <p>11 the employees in Puerto Rico.</p> <p>12 (Plaintiffs' Exhibit 169 marked.)</p> <p>13 Q (By Mr. Moulton) Are you aware of -- so we're</p> <p>14 going to go to Plaintiff's Exhibit 169, and let's start</p> <p>15 at the bottom here. Let's kind of work our way through.</p> <p>16 It's a little -- little long. They're talking about</p> <p>17 making corrections, JD Kinsey and these people were</p> <p>18 talking about making corrections to the payroll.</p> <p>19 Do you agree with that?</p> <p>20 A That's what the email says.</p> <p>21 Q Okay. So JD Kinsey's asking, on January 9th,</p> <p>22 at 3 -- of 2018 at 3:17, this email on -- spans 3158 and</p> <p>23 3159 as far as the Bates numbers. So JD Kinsey's</p> <p>24 asking, "Hey Alex and Bethany, here is an updated</p> <p>25 spreadsheet. To the best of my knowledge I have added</p>

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<p style="text-align: right;">Page 110</p> <p>1 all hourly employees that did not work a full 14 day 2 schedule. I put how many days they worked, the 3 classification, their rate, and what they 'should' 4 receive for the check. I don't know what you want to 5 process this or adjust amount owed versus the amount 6 their hourly rate shows."</p> <p>7 Do you know what he's talking about?</p> <p>8 <b>A Yes, I do.</b></p> <p>9 <b>Q Okay. What does he mean?</b></p> <p>10 <b>A So Mr. Kinsey is saying we've got these hourly</b> 11 <b>employees that have worked something less than a 14-day</b> 12 <b>schedule. Running through the mechanics of that</b> 13 <b>calculation, their hourly rate for regular and overtime</b> 14 <b>wages, he's identified a small population of employees,</b> 15 <b>it appears, that based on that regular and overtime</b> 16 <b>calculation, these employees would earn an amount</b> 17 <b>different than their targeted earning amount, which</b> 18 <b>would be an amount of -- that you brought up several</b> 19 <b>times of X amount per day in the event the employee</b> 20 <b>works each day during the payroll period at the hours</b> 21 <b>for each shift.</b></p> <p>22 <b>Q Right. So the correction would be to -- to</b> 23 <b>reconcile -- or to bring up the -- what the date -- what</b> 24 <b>the hourly pay was up to that targeted amount, correct?</b></p> <p>25 <b>A I wouldn't characterize that as a correction.</b></p>	<p style="text-align: right;">Page 112</p> <p>1 shows."</p> <p>2 Do you know what he means?</p> <p>3 <b>A He's saying I've identified these amounts this</b> 4 <b>can either be processed for employee goodwill or not</b> 5 <b>processed. Mr. Kinsey's a clerk. It's not his job to</b> 6 <b>either approve or disprove. He's identified these</b> 7 <b>instances, but he has no ability to approve or not</b> 8 <b>approve any of these items that he's identified.</b></p> <p>9 <b>Q So do you know why he thinks they're owed or</b> 10 <b>not?</b></p> <p>11 MR. STUKENBERG: He doesn't say.</p> <p>12 <b>Q (By Mr. Moulton) I'm asking you do you know.</b></p> <p>13 <b>A This email doesn't say.</b></p> <p>14 <b>Q Okay. Well, do you know apart from this</b> 15 <b>email?</b></p> <p>16 <b>A I've testified as to what the calculation</b> 17 <b>represents.</b></p> <p>18 <b>Q So you don't know why JD Kinsey thinks its</b> 19 <b>owed?</b></p> <p>20 MR. STUKENBERG: That doesn't say that he 21 thinks it's owed.</p> <p>22 MR. MOULTON: Yeah, he does.</p> <p>23 MR. STUKENBERG: Where?</p> <p>24 MR. MOULTON: It just says right there 25 the word "owed." It says that --</p>
<p style="text-align: right;">Page 111</p> <p>1 That would be a calculation of a discretionary amount 2 that could either be paid to the employee for employee 3 goodwill or not paid to the employee based on the 4 decision of the employee's managers.</p> <p>5 <b>Q Okay. So these adjustments that we're talking</b> 6 <b>about are, in your opinion, a bonus?</b></p> <p>7 <b>A These adjustments would be discretionary</b> 8 <b>amounts related to employee goodwill that could be</b> 9 <b>either paid or not paid based on the discretion of their</b> 10 <b>managers.</b></p> <p>11 <b>Q Okay. Did you ever talk to JD Kinsey about</b> 12 <b>this?</b></p> <p>13 <b>A Did I personally ever talk to Mr. Kinsey?</b></p> <p>14 <b>Q Uh-huh, about this.</b></p> <p>15 <b>A No, sir.</b></p> <p>16 <b>Q Okay. So you wouldn't know why Mr. Kinsey</b> 17 <b>believes that these adjustments are owed or not, as he</b> 18 <b>says?</b></p> <p>19 MR. STUKENBERG: Where does he say owed? 20 I don't see where he says that.</p> <p>21 <b>A Yeah, I don't believe that is --</b></p> <p>22 <b>Q (By Mr. Moulton) "I don't know how you" --</b></p> <p>23 <b>A -- stated.</b></p> <p>24 <b>Q "I don't know how you want to process this or</b> 25 <b>adjust amount owed versus the amount their hourly rate</b></p>	<p style="text-align: right;">Page 113</p> <p>1 MR. STUKENBERG: It says, I don't know 2 how you want to process this or adjust the amount. He's 3 not saying you owe money.</p> <p>4 MR. MOULTON: Owed -- "adjust amount owed 5 versus the amount their hourly rate shows."</p> <p>6 <b>Q (By Mr. Moulton) Do you know what this means?</b> 7 <b>Just tell me. I mean, do you know what he means by all</b> 8 <b>that? Do you have an opinion?</b></p> <p>9 <b>A I've testified as to what the calculation was.</b></p> <p>10 <b>Q Yeah, I'm not -- I'm not asking that though.</b> 11 <b>I'm asking do you know what JD Kinsey means in this</b> 12 <b>email?</b></p> <p>13 MR. STUKENBERG: Objection. The email 14 says what it is.</p> <p>15 <b>Q (By Mr. Moulton) Do you know what JD Kinsey</b> 16 <b>means?</b></p> <p>17 <b>A The email speaks for itself.</b></p> <p>18 <b>Q Okay. So the email does speak for itself.</b> 19 <b>Apart from what's written in the email, you don't know</b> 20 <b>anything else about what JD Kinsey's talking about here?</b></p> <p>21 <b>A That completely mischaracterizes my testimony</b> 22 <b>about the analysis that Mr. Kinsey put together. So to</b> 23 <b>say that I don't know anything --</b></p> <p>24 <b>Q And, yeah, I --</b></p> <p>25 <b>A -- it splits my testimony --</b></p>

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<p style="text-align: right;">Page 114</p> <p>1 Q Fair enough.</p> <p>2 A -- up and is --</p> <p>3 Q I'll reask the question.</p> <p>4 You don't -- you don't know -- I mean,</p> <p>5 and just -- let's -- maybe we'll just do it like this.</p> <p>6 You've never talked to JD Kinsey at all about making</p> <p>7 adjustments?</p> <p>8 A <b>Regards to my approval of any discretionary</b></p> <p>9 <b>amounts, no. I -- I was not involved in the day-to-day</b></p> <p>10 <b>approval. I'm not the --</b></p> <p>11 Q No.</p> <p>12 A -- supervisor for anybody on the island. That</p> <p>13 would have been handled by their employers --</p> <p>14 Q That's just --</p> <p>15 A -- in regards to --</p> <p>16 Q That's just not my --</p> <p>17 A -- payroll.</p> <p>18 Q -- question.</p> <p>19 MR. MOULTON: Objection, nonresponsive.</p> <p>20 Q (By Mr. Moulton) I just want to know if you</p> <p>21 ever talked to JD Kinsey about making adjustments. Yes</p> <p>22 or no?</p> <p>23 A <b>And I just want to finish a couple of</b></p> <p>24 <b>questions where I can answer them without you talking</b></p> <p>25 <b>over me, out of respect for the court reporter.</b></p>	<p style="text-align: right;">Page 116</p> <p>1 out there: To the extent that those discussions involve</p> <p>2 privileged matters, I'm going to ask you not to answer.</p> <p>3 I assume you don't want to know about</p> <p>4 privileged discussions.</p> <p>5 MR. MOULTON: No.</p> <p>6 Q (By Mr. Moulton) I want to know are you aware</p> <p>7 no emails have been produced from your account regarding</p> <p>8 the wages and hours and the thought processes into your</p> <p>9 pay plan?</p> <p>10 MR. STUKENBERG: Objection,</p> <p>11 mischaracterizes the documents that have been produced.</p> <p>12 Q (By Mr. Moulton) Do you know if any have been</p> <p>13 produced from your account? Do you -- do you have</p> <p>14 personal knowledge of that?</p> <p>15 A <b>Yes, I do.</b></p> <p>16 Q Okay. So your testimony is that you have</p> <p>17 produced these documents?</p> <p>18 A <b>My testimony is that the documents out of my</b></p> <p>19 <b>email account have been produced and those documents do</b></p> <p>20 <b>exist.</b></p> <p>21 Q Okay.</p> <p>22 MR. MOULTON: What was my last exhibit</p> <p>23 number?</p> <p>24 MR. STAMEY: 169.</p> <p>25 MR. MOULTON: It was 169?</p>
<p style="text-align: right;">Page 115</p> <p>1 Q Okay. Look, this -- we could probably -- you</p> <p>2 know, we -- we could be done in maybe 30 minutes or an</p> <p>3 hour if you'll just answer the questions, okay?</p> <p>4 Did you talk -- just focus on my</p> <p>5 question: Have you ever talked to JD Kinsey about</p> <p>6 making adjustments? Yes or no?</p> <p>7 A <b>I don't recall any discussions between myself</b></p> <p>8 <b>and JD Kinsey regarding any payroll processing matters.</b></p> <p>9 Q As part of discovery in this case, did you --</p> <p>10 were you asked to -- to look for any relevant emails</p> <p>11 that you may have?</p> <p>12 A <b>My relevant emails were pulled via search</b></p> <p>13 <b>criteria.</b></p> <p>14 Q Okay. And who performed that search?</p> <p>15 A <b>That would have been directed by counsel.</b></p> <p>16 Q So did you do the search, or did counsel do</p> <p>17 the search?</p> <p>18 A <b>That would have been performed at the</b></p> <p>19 <b>discussion of -- between counsel and our IT department.</b></p> <p>20 <b>I don't perform those searches myself.</b></p> <p>21 Q Can you explain why we don't have any emails</p> <p>22 from you?</p> <p>23 MR. STUKENBERG: Objection,</p> <p>24 mischaracterizes the evidence.</p> <p>25 And I just want to go ahead and get it</p>	<p style="text-align: right;">Page 117</p> <p>1 THE REPORTER: Yes.</p> <p>2 MR. MOULTON: Okay.</p> <p>3 MR. STAMEY: Don't ever say I'm not</p> <p>4 helpful.</p> <p>5 MR. MOULTON: In more ways than one.</p> <p>6 Q (By Mr. Moulton) All right. Mr. Layton,</p> <p>7 let's -- I want to go through some payroll examples with</p> <p>8 you if that's all right with you. Let's see how this</p> <p>9 exhibit does with screen share.</p> <p>10 MR. STUKENBERG: What software are you</p> <p>11 using?</p> <p>12 MR. MOULTON: I use -- well, we'll go --</p> <p>13 we can talk about that off the record, but I'm happy to</p> <p>14 talk about it.</p> <p>15 Q (By Mr. Moulton) Before we get -- while we're</p> <p>16 waiting for this to load, do -- do you recall whether --</p> <p>17 now pay attention to my question here because I have a</p> <p>18 very specific question. We don't have to be here all</p> <p>19 day, okay?</p> <p>20 Do you recall whether or not</p> <p>21 Mr. Broussard actually reviewed actual payroll</p> <p>22 documents, like the pay stubs or time sheets, that were</p> <p>23 going out to employees; or was his analysis with you</p> <p>24 guys prospective, looking at helping you guys decide</p> <p>25 what you were going to do?</p>

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<p style="text-align: right;">Page 118</p> <p>1       <b>A</b>     Mr. Broussard's analysis was to give us the</p> <p>2 <b>option between compliant pay plans.</b></p> <p>3       <b>Q</b>     Okay. So I believe he testified yesterday</p> <p>4 that he did not get involved in analyzing the actual</p> <p>5 payroll that went out to see if it complied with the law</p> <p>6 or his advice.</p> <p>7       <b>A</b>     I believe that somewhat mischaracterizes it.</p> <p>8 So in regards to reviewing specific pay stubs, I don't</p> <p>9 believe that to be the case, that Mr. Broussard</p> <p>10 reviewed. Mr. Broussard did, however, review the hourly</p> <p>11 pay practice and the application of regular and overtime</p> <p>12 rates.</p> <p>13       <b>Q</b>     But he didn't actually review pay stubs is</p> <p>14 what you're saying?</p> <p>15       <b>A</b>     I don't believe Mr. Broussard actually</p> <p>16 reviewed pay stubs --</p> <p>17       <b>Q</b>     Okay.</p> <p>18       <b>A</b>     -- no.</p> <p>19               (Plaintiffs' Exhibit 170 marked.)</p> <p>20       <b>Q</b>     (By Mr. Moulton) All right. So we're going to</p> <p>21 look at a series of pay stubs and time sheets that have</p> <p>22 been produced in this matter, and it's Plaintiff's</p> <p>23 Exhibit 170. For example, we have one here on your</p> <p>24 screen -- you should be able to see -- for Justin</p> <p>25 Washburn.</p>	<p style="text-align: right;">Page 120</p> <p>1 don't think you're going to get an exact number of days.</p> <p>2       <b>Q</b>     Oh -- oh, that's not the column we'd be</p> <p>3 looking at. That's the year to date. Let's look at the</p> <p>4 current period. For this pay period is all -- is what</p> <p>5 we're talking about.</p> <p>6               So do you see how his current period, he</p> <p>7 gets paid \$1600?</p> <p>8       <b>A</b>     For the current period, his gross earnings are</p> <p>9 \$1600. For the year to date, that's not divisible by</p> <p>10 any round number.</p> <p>11       <b>Q</b>     Right. And -- and I'm not going to ask you</p> <p>12 about year to date numbers. I just don't care because</p> <p>13 that could be anything.</p> <p>14       <b>A</b>     Well, because the statistics aren't in your</p> <p>15 favor.</p> <p>16       <b>Q</b>     Well, it -- also it's because it could have</p> <p>17 included pay rates that weren't Puerto Rico rates</p> <p>18 because we're already into June, correct?</p> <p>19       <b>A</b>     No. It's just that the statistics aren't in</p> <p>20 your favor.</p> <p>21       <b>Q</b>     Do you know when Mr. Washburn started?</p> <p>22       <b>A</b>     I can't tell that based on this particular pay</p> <p>23 record.</p> <p>24       <b>Q</b>     So you don't know what he was earning before</p> <p>25 or not, do you?</p>
<p style="text-align: right;">Page 119</p> <p>1               Now, before we get into it, I mean,</p> <p>2 you've probably looked at even more of these than I</p> <p>3 have. I'm pretty sure I've looked at thousands of</p> <p>4 payroll records at this point. Would you agree that you</p> <p>5 have looked at thousands of payroll records at this</p> <p>6 point?</p> <p>7       <b>A</b>     I've looked at many payroll records, yes.</p> <p>8       <b>Q</b>     Okay. When you look at Justin Washburn's</p> <p>9 payroll record, do you know what target rate that 37.84</p> <p>10 rate corresponds to?</p> <p>11       <b>A</b>     Mr. Washburn's pay rate is 37.84 per hour as</p> <p>12 an hourly employee.</p> <p>13       <b>Q</b>     And what would the target rate be for him?</p> <p>14       <b>A</b>     If Mr. Washburn were to work seven days a week</p> <p>15 at 16 hours per day, back of the envelope math, I think</p> <p>16 Mr. Washburn would earn close to but not exactly \$800</p> <p>17 per day if you -- if you reverse calculated that amount</p> <p>18 for a pay period.</p> <p>19       <b>Q</b>     Right. And we can actually -- we can actually</p> <p>20 know that just looking at his pay stub because we know</p> <p>21 that 37.84 rate, back on 151, corresponds to the target</p> <p>22 or "PR Storm - Per Day" rate of \$800, correct?</p> <p>23       <b>A</b>     800 is the target if the employee works seven</p> <p>24 days a week at 16 hours per day. I think if you go back</p> <p>25 to his pay stub and try to divide \$24,801.28 by 800, I</p>	<p style="text-align: right;">Page 121</p> <p>1       <b>A</b>     I do know based on my data that the statistics</p> <p>2 are not in your favor, which is why you're not bringing</p> <p>3 them up.</p> <p>4       <b>Q</b>     And I'm not -- yeah, okay. Well, either way,</p> <p>5 I'm not -- we're -- we're not going to -- I'm not going</p> <p>6 to ask about year to date right now, okay? And so if</p> <p>7 I'm not asking about it, I'm not asking you to talk</p> <p>8 about it. And I'll -- if I change that, I'll tell you</p> <p>9 because you're just wasting time and being nonresponsive</p> <p>10 if you do.</p> <p>11       <b>A</b>     You're wasting my time with something that the</p> <p>12 statistics don't -- don't support, but I'm happy and I'm</p> <p>13 here for -- for this amount of time.</p> <p>14       <b>Q</b>     You would -- you understand that folks</p> <p>15 before -- if they were working for Higher Power before</p> <p>16 the island, that they could have had any number of rates</p> <p>17 and actually had hours that were not divisible by 16 --</p> <p>18               MR. STUKENBERG: Do you --</p> <p>19       <b>Q</b>     (By Mr. Moulton) -- correct?</p> <p>20               MR. STUKENBERG: -- know if he did work</p> <p>21 before?</p> <p>22               MR. MOULTON: I don't know. I don't even</p> <p>23 know why he's doing this.</p> <p>24       <b>Q</b>     (By Mr. Moulton) Why are you doing this?</p> <p>25       <b>A</b>     I don't know. Why are you doing this?</p>

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<p style="text-align: right;">Page 122</p> <p>1 Because -- because the statistics don't support you. So</p> <p>2 you've got a two-day period that gets to a round number</p> <p>3 and then you've got a much larger period that doesn't,</p> <p>4 but you want to focus on these two days.</p> <p>5 Q And that --</p> <p>6 A So that's fine.</p> <p>7 Q That's exactly what I want to do, and that's</p> <p>8 all we're doing. We're looking at this pay stub in this</p> <p>9 period. That's what I'm doing with you, okay? When</p> <p>10 your lawyer wants to ask you questions at trial, you</p> <p>11 can -- y'all can do whatever you want as long as it's</p> <p>12 within the rules, okay? That's not what I'm doing. I'm</p> <p>13 asking you about the current period and the hours on</p> <p>14 Justin Washburn's pay stub here, okay? Are we clear on</p> <p>15 that?</p> <p>16 A Sure.</p> <p>17 Q Okay.</p> <p>18 All right. Looking at his pay stub, can</p> <p>19 you tell me how many days he worked?</p> <p>20 A It appears that Mr. Washburn worked two days</p> <p>21 during this pay period.</p> <p>22 Q And at \$800 per day, he would get 1600; and</p> <p>23 that's what he was paid, correct?</p> <p>24 A Mr. Washburn was paid for 16 hours at 37.84</p> <p>25 and appears to have been paid for 16 hours at 56.76.</p>	<p style="text-align: right;">Page 124</p> <p>1 Q Do you know how many days he worked?</p> <p>2 A Not based on this particular record.</p> <p>3 Q If his target rate is \$800 per day, does that</p> <p>4 inform you how many days he worked?</p> <p>5 A That informs me what his target earnings would</p> <p>6 be if he works for seven days and is available to work</p> <p>7 or works for seven days at 16 hours per day. Over a</p> <p>8 period of -- of a payroll period, he would earn</p> <p>9 approximately \$800 per day if you reverse solve that but</p> <p>10 not exactly; and we've gone through that math.</p> <p>11 Q So on Page 7,081 in this same exhibit, we can</p> <p>12 see the corresponding time detail report. And do you</p> <p>13 see how it says "Fixed: (DYR)" and \$800? Do you see</p> <p>14 that?</p> <p>15 A Well, DYR would be --</p> <p>16 Q I'm asking you do you see that.</p> <p>17 A Yes, I do.</p> <p>18 Q Okay. Does DYR mean day rate?</p> <p>19 A DYR is a pay code. In this -- in this</p> <p>20 instance that would be an inappropriate pay code for</p> <p>21 this employee, and -- and I would characterize that as</p> <p>22 an error.</p> <p>23 MR. MOULTON: And objection,</p> <p>24 nonresponsive.</p> <p>25 Q (By Mr. Moulton) My question is: Does DYR</p>
<p style="text-align: right;">Page 123</p> <p>1 Q But that's not all he was paid?</p> <p>2 A Appears to have \$86.40 under a day rate pay</p> <p>3 code.</p> <p>4 Q Okay. So that 86.40 is exactly the amount</p> <p>5 needed to bring his hourly pay up to the Puerto Rico</p> <p>6 storm day rate, correct?</p> <p>7 MR. STUKENBERG: Objection, form.</p> <p>8 A The rates are the hourly rates that are</p> <p>9 reflected here. The 86.40 appears to be a discretionary</p> <p>10 amount that was approved for Mr. Washburn.</p> <p>11 Q (By Mr. Moulton) All right. Let's go to</p> <p>12 the -- in the same Exhibit 170, we're going to go to the</p> <p>13 next pay stub, which is on Mammoth 7080. And</p> <p>14 Mr. Washburn, in his pay period of May 14th/May 27, was</p> <p>15 paid, under a day-rate category, \$800.</p> <p>16 Do you see that?</p> <p>17 A Yes, I do.</p> <p>18 Q Okay. Do you know why it doesn't show hours</p> <p>19 and rates here?</p> <p>20 A That would appear to be a payroll input error</p> <p>21 in regards to Mr. Washburn given that he is an hourly</p> <p>22 employee.</p> <p>23 Q Okay. Do you know how many hours he worked</p> <p>24 this day?</p> <p>25 A I do not.</p>	<p style="text-align: right;">Page 125</p> <p>1 mean day rate?</p> <p>2 A It's a pay code.</p> <p>3 Q Right. What does -- what does it mean?</p> <p>4 A It is a day rate pay code that is an error in</p> <p>5 this particular instance.</p> <p>6 Q Okay. Let me ask you this: The DYR code in</p> <p>7 the Time Detail Report, how does that map out into the</p> <p>8 paycheck?</p> <p>9 A DYR as the pay code --</p> <p>10 Q Right.</p> <p>11 A -- would map to the day rate line item on the</p> <p>12 pay stub.</p> <p>13 Q Okay. So normal people would say DYR means</p> <p>14 day rate?</p> <p>15 MR. STUKENBERG: Objection, form.</p> <p>16 A That's not at all what I said. It's a pay</p> <p>17 code, and it's an error.</p> <p>18 Q (By Mr. Moulton) So it doesn't mean day rate?</p> <p>19 A I said the DYR pay code maps to the day rate</p> <p>20 line.</p> <p>21 Q Okay. Moving right along in these examples</p> <p>22 for Tyler Halford, on Bates No. 533, we have a pay</p> <p>23 period March 5th/March 18th. Do you see that?</p> <p>24 A Yes, I do.</p> <p>25 Q Okay. Do you -- now, you probably recall that</p>

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<p style="text-align: right;">Page 126</p> <p>1 37.84 is the rate that is associated with a target rate</p> <p>2 of \$800 per day, correct?</p> <p>3     <b>A</b>     <b>I don't recall where 37.84 maps to. Appears</b></p> <p>4 <b>to be correct, yes.</b></p> <p>5     <b>Q</b>     <b>All right. If we go back to Exhibit 151, we</b></p> <p>6 <b>see the "PR Storm - Per Hour" rate of 37.84 is right</b></p> <p>7 <b>next to the "PR Storm - Per Day" of \$800; and you call</b></p> <p>8 <b>that a target rate, right?</b></p> <p>9     <b>A</b>     <b>\$800 is a target rate, yes.</b></p> <p>10    <b>Q</b>     <b>Okay. So looking at this pay stub for Tyler</b></p> <p>11 <b>Halford back in Exhibit 170, by looking at this pay</b></p> <p>12 <b>stub, can you tell me how many days he worked in -- for</b></p> <p>13 <b>this pay period?</b></p> <p>14    <b>A</b>     <b>He appears to likely have worked for ten days.</b></p> <p>15    <b>Q</b>     <b>Okay. And why do you say that?</b></p> <p>16    <b>A</b>     <b>16 hours per day --</b></p> <p>17    <b>Q</b>     <b>Times 10 equals 160, right?</b></p> <p>18    <b>A</b>     <b>Yep.</b></p> <p>19    <b>Q</b>     <b>Okay. Now, a -- a guy whose target rate is</b></p> <p>20 <b>\$800 per day, if he works ten days, his target pay would</b></p> <p>21 <b>be \$8,000, right?</b></p> <p>22    <b>A</b>     <b>If he works ten days, then his pay would be</b></p> <p>23 <b>whatever it calculates to be. It would not be \$800 to</b></p> <p>24 <b>the penny. It would calculate whatever the math is.</b></p> <p>25    <b>Q</b>     <b>Okay. So you're saying that his -- that his</b></p>	<p style="text-align: right;">Page 128</p> <p>1 <b>this error is a minute portion of the overall population</b></p> <p>2 <b>for hourly employees.</b></p> <p>3     <b>Q</b>     <b>And that's the reason you're giving for why it</b></p> <p>4 <b>wasn't fixed?</b></p> <p>5     <b>A</b>     <b>It was an error in selection of pay code.</b></p> <p>6     <b>Q</b>     <b>Okay. No one ever noticed and caught this</b></p> <p>7 <b>error and fixed it?</b></p> <p>8     <b>A</b>     <b>It's a discretionary amount that was paid to</b></p> <p>9 <b>the employees. The selection of the pay code was an</b></p> <p>10 <b>error. It's a minute percentage of the overall</b></p> <p>11 <b>population both in terms of dollar amount as well as</b></p> <p>12 <b>occurrence.</b></p> <p>13    <b>Q</b>     <b>So the \$432 is a discretionary amount</b></p> <p>14 <b>determined by who?</b></p> <p>15    <b>A</b>     <b>That would be a discretionary amount that</b></p> <p>16 <b>would have been approved by the employee's supervisor.</b></p> <p>17    <b>Q</b>     <b>Okay. How do you guys track that?</b></p> <p>18    <b>A</b>     <b>It's tracked -- it was input under an</b></p> <p>19 <b>inappropriate code here.</b></p> <p>20    <b>Q</b>     <b>No. I'm not asking that. You're -- you're</b></p> <p>21 <b>saying the employee's supervisor approved specifically a</b></p> <p>22 <b>432 adjustment for Tyler Halford, correct?</b></p> <p>23    <b>A</b>     <b>My testimony was that Mr. Halford received a</b></p> <p>24 <b>discretionary amount of \$432 in this particular pay</b></p> <p>25 <b>period.</b></p>
<p style="text-align: right;">Page 127</p> <p>1 target would have been 3,027.2 plus 4540.8?</p> <p>2     <b>A</b>     <b>That's what he would have earned during that</b></p> <p>3 <b>pay period.</b></p> <p>4     <b>Q</b>     <b>Okay. And this additional -- this day rate</b></p> <p>5 <b>boost of 432 that brings him to exactly his target rate</b></p> <p>6 <b>is an error?</b></p> <p>7            <b>MR. STUKENBERG: Objection, form.</b></p> <p>8     <b>A</b>     <b>It's not a day rate boost. I've not</b></p> <p>9 <b>characterized anything as a, quote, unquote, day rate</b></p> <p>10 <b>boost. I have testified that there were instances in</b></p> <p>11 <b>which we made discretionary bonuses to employees. There</b></p> <p>12 <b>were other instances in which we did not.</b></p> <p>13    <b>Q</b>     <b>(By Mr. Moulton) So the --</b></p> <p>14    <b>A</b>     <b>In this particular case, the characterization</b></p> <p>15 <b>of that discretionary bonus under the day rate pay code</b></p> <p>16 <b>was an error in selection of pay code.</b></p> <p>17    <b>Q</b>     <b>So it should have been bonus?</b></p> <p>18    <b>A</b>     <b>Yes, sir.</b></p> <p>19    <b>Q</b>     <b>Okay. How come no one ever fixed this?</b></p> <p>20    <b>A</b>     <b>It's an error of pay code; and statistically,</b></p> <p>21 <b>if you look at this error, this error occurred less than</b></p> <p>22 <b>2 percent of the time.</b></p> <p>23    <b>Q</b>     <b>So it wasn't worth fixing? Is that what</b></p> <p>24 <b>you're saying?</b></p> <p>25    <b>A</b>     <b>That's not what I said. I said statistically</b></p>	<p style="text-align: right;">Page 129</p> <p>1     <b>Q</b>     <b>And you're saying that his supervisor had to</b></p> <p>2 <b>specifically approve it for it to go through, right?</b></p> <p>3     <b>A</b>     <b>That's correct.</b></p> <p>4     <b>Q</b>     <b>Okay. What documents would reflect these</b></p> <p>5 <b>approvals?</b></p> <p>6     <b>A</b>     <b>The approval process would be contained inside</b></p> <p>7 <b>of the HR/IS system in regards to the payroll processing</b></p> <p>8 <b>procedures.</b></p> <p>9     <b>Q</b>     <b>What are those documents called?</b></p> <p>10    <b>A</b>     <b>Those are electronic approvals the majority of</b></p> <p>11 <b>the time. In some instances, those approvals could have</b></p> <p>12 <b>been either verbal or in writing via paper or email.</b></p> <p>13    <b>Q</b>     <b>Okay. So what's the form called to get your</b></p> <p>14 <b>discretionary amount added if you're Tyler Halford?</b></p> <p>15 <b>What do you do?</b></p> <p>16    <b>A</b>     <b>If you're Tyler Halford, you have no input in</b></p> <p>17 <b>that process. That's at the discretion of the</b></p> <p>18 <b>supervisor, not at Mr. Halford.</b></p> <p>19    <b>Q</b>     <b>So on every single payroll that doesn't have a</b></p> <p>20 <b>full week, the supervisor is going to review it and</b></p> <p>21 <b>decide whether or not he's going to apply the</b></p> <p>22 <b>discretionary amount?</b></p> <p>23    <b>A</b>     <b>Supervisors have discretion in regards to the</b></p> <p>24 <b>payment of any discretionary bonuses.</b></p> <p>25    <b>Q</b>     <b>Okay. What's the form called for doing this?</b></p>

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<p>1 A There is no form name, and there is no single</p> <p>2 form. I mentioned four or five different ways that a</p> <p>3 discretionary bonus may be approved by a supervisor.</p> <p>4 Q If I'm Tyler Halford's supervisor, what do I</p> <p>5 do to get him this discretionary amount added?</p> <p>6 A Tyler Halford's supervisor has the</p> <p>7 discretion --</p> <p>8 Q No. I want to know what he has to do.</p> <p>9 A And I want to answer --</p> <p>10 Q Yeah.</p> <p>11 A -- without you interrupting me again and again</p> <p>12 and again and again.</p> <p>13 Q Okay. Tell me what he does.</p> <p>14 A Mr. Halford's supervisor would submit an</p> <p>15 amount of a discretionary bonus to the payroll</p> <p>16 processing team and approve that bonus via either</p> <p>17 writing in the form of email, verbally, or inside of</p> <p>18 electronic approval of the payroll.</p> <p>19 Q Okay. So there should be documents that would</p> <p>20 document this?</p> <p>21 A I've mentioned there may or may not be</p> <p>22 documents. I mentioned some of the approvals may be</p> <p>23 verbal.</p> <p>24 Q Sure.</p> <p>25 A The approval and processing of these amounts</p>	<p>1 I take offense to.</p> <p>2 Q Okay. Can you --</p> <p>3 A That's unprofessional, and I don't appreciate</p> <p>4 the connotation that I'm a liar.</p> <p>5 Q I -- I hear you.</p> <p>6 A No.</p> <p>7 Q No, I hear you. It's --</p> <p>8 A It's true. You're unprofessional --</p> <p>9 Q It's not cool getting call --</p> <p>10 A -- and don't badger me and call me a liar.</p> <p>11 Don't ever call me a liar again.</p> <p>12 Q How about this: If what you're saying is</p> <p>13 true --</p> <p>14 A What I'm saying is true; and to the extent you</p> <p>15 keep going down this path and calling me a liar, it</p> <p>16 doesn't end well because I'm not a liar. I've testified</p> <p>17 truthfully. I'm under oath, and I'm not a liar. So</p> <p>18 quit calling me a liar.</p> <p>19 Q How about this: Give me the search term that</p> <p>20 I would need to find even one of these supposed</p> <p>21 approvals that you're talking about.</p> <p>22 A You've got a mountain of documents.</p> <p>23 Q No. I --</p> <p>24 A If you can't find it, it's not my problem.</p> <p>25 They're in there. I've testified that they're in there.</p>
Page 131	Page 133
<p>1 is contained inside of the HR/IS system in regards to</p> <p>2 the amounts that were ultimately approved and paid, but</p> <p>3 the requesting an approval may or may not be in writing.</p> <p>4 Q So if I want to ask your lawyers for copies or</p> <p>5 examples of these, what am I asking for?</p> <p>6 A You have a mountain of documents that have</p> <p>7 been produced that contain discretionary calculations.</p> <p>8 Some were paid. Some were not. And you have even more</p> <p>9 documents in regards to payroll records in regards to</p> <p>10 how employees were paid.</p> <p>11 Q Can you show me a time when it was ever</p> <p>12 denied?</p> <p>13 A Yes, there were times when it was denied.</p> <p>14 Q Can you show it to me on paper?</p> <p>15 A There are pay stubs in which discretionary</p> <p>16 bonuses for periods of time in which an employee worked</p> <p>17 less than their full seven-day workweek --</p> <p>18 Q I have not --</p> <p>19 A -- and they were not paid any discretionary</p> <p>20 amount.</p> <p>21 Q You have not produced a single document</p> <p>22 that -- between supervisors and people in payroll about</p> <p>23 discretionary amounts ever. So if you're telling me</p> <p>24 that's true, that's a lie.</p> <p>25 A And if you want to call me a liar, then that,</p>	<p>1 Q If I wanted to find it, what would I search</p> <p>2 for?</p> <p>3 A I would start by looking at the documents and</p> <p>4 doing your job.</p> <p>5 Q I have done that. I'm --</p> <p>6 A Obviously you've not done it well because I've</p> <p>7 seen them.</p> <p>8 Q Are they emails?</p> <p>9 A The documents are in there.</p> <p>10 Q Are they emails?</p> <p>11 A Not my job to do your job.</p> <p>12 Q Are they emails? The ones you're talking</p> <p>13 about that you've seen, are they emails?</p> <p>14 A In regards to emails of what?</p> <p>15 Q These discretionary amounts added that you</p> <p>16 keep talking about. You said you've seen documents that</p> <p>17 talk about these discretionary amounts.</p> <p>18 A There are documents that have been produced in</p> <p>19 which there are calculations such that there is an</p> <p>20 opportunity for supervisors to either approve or not</p> <p>21 approve a discretionary amount. They are in the form of</p> <p>22 spreadsheets, and you can shake your head, because you</p> <p>23 haven't done your job, all you want.</p> <p>24 Q Okay.</p> <p>25 A The facts are that the documents are in there.</p>

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<p style="text-align: right;">Page 134</p> <p>1 Q We've seen spreadsheets of, like, Missy Davis,  2 like, when she's actually processing them, okay? But  3 I'm talk -- I want to know -- what I'm asking about are  4 the documents where supervisors are submitting the  5 request for the -- the discretionary amount. You're  6 saying those exist somewhere.</p> <p>7 A That's not at all what I said.</p> <p>8 Q So they don't exist?</p> <p>9 A That's not at all what I said.</p> <p>10 Q So what's the answer?</p> <p>11 A I'll reincorporate all my previous testimony.</p> <p>12 Q What's the answer? Do those documents --</p> <p>13 A I've given you the answer.</p> <p>14 Q Have you seen those documents in this  15 production?</p> <p>16 MR. STUKENBERG: What documents are you  17 asking for, Dave?</p> <p>18 MR. MOULTON: He -- okay. He's saying  19 that the amounts like 432 are discretionary amounts that  20 come through when supervisors request them and that the  21 company can decide whether or not to add them or not.</p> <p>22 THE WITNESS: That's not what I said.</p> <p>23 MR. STUKENBERG: I didn't understand that  24 to be his testimony --</p> <p>25 MR. MOULTON: Okay.</p>	<p style="text-align: right;">Page 136</p> <p>1 A The communication could come from a number of  2 areas. The supervisor --</p> <p>3 Q Who --</p> <p>4 A -- could --</p> <p>5 Q Who sends it?</p> <p>6 A Can I answer --</p> <p>7 Q Yes.</p> <p>8 A -- or are you just going to interrupt me all  9 day? It's very rude --</p> <p>10 Q Who --</p> <p>11 A -- and to the extent that --</p> <p>12 Q Who sends it?</p> <p>13 A -- you want to continue your rudeness, it's  14 really not productive. I'm trying to answer your  15 questions, and you keep talking over me.</p> <p>16 Q Who sends it?</p> <p>17 A The supervisor can send, either in writing or  18 via verbal direction, for the discretionary amount to be  19 paid. In the alternative, a discretionary proposal may  20 be submitted from any one of a number of clerks to the  21 supervisor for approval in email or through the approval  22 of a payroll processing function.</p> <p>23 Q Safe to say for Tyler Halford's \$432 you can't  24 tell me who approved it?</p> <p>25 A Not on the face of this document. Nor would</p>
<p style="text-align: right;">Page 135</p> <p>1 Q (By Mr. Moulton) So what --</p> <p>2 MR. STUKENBERG: -- but I'm not going to  3 testify for him.</p> <p>4 Q (By Mr. Moulton) What about that process is  5 wrong?</p> <p>6 A I'll speak real slowly for you.</p> <p>7 Q Yeah. Go ahead.</p> <p>8 A I reincorporate all of my previous testimony  9 in which I've told you the documents -- some of which  10 are documents, some of which are verbal -- in which  11 supervisors have the opportunity to either approve or  12 not approve any discretionary amount.</p> <p>13 Q Okay. And obviously if I'm talking about the  14 documents, I'm not talking about the verbal ones. What  15 I want to know is have you produced documents that show  16 the request from supervisors for any discretionary  17 amounts?</p> <p>18 A Whether there were -- the -- the requests from  19 supervisors is a -- is a misconnotation of my testimony.</p> <p>20 Q Okay. So you're saying that they have an  21 opportunity to approve or reject?</p> <p>22 A Supervisors have the opportunity to approve or  23 reject any discretionary amount paid.</p> <p>24 Q So who sends them the approval or rejection  25 communication?</p>	<p style="text-align: right;">Page 137</p> <p>1 you be able to see any type of approval process on any  2 pay stub for any employee at any one time.</p> <p>3 Q Can we see it on the Time Detail Report?</p> <p>4 A This is a time entry report and not a payroll  5 approval report. So you can see who keyed amounts into  6 the system. It doesn't -- this report doesn't reflect  7 who approved payroll or payroll amounts or bonuses.  8 It -- it only captures the input side.</p> <p>9 Q Okay. So if we go down to Page 549 in this  10 exhibit, 170, we can see that 432 was keyed in; and  11 you're saying that that would have been keyed in based  12 on these reports you're talking about?</p> <p>13 A I don't think I testified as to any reports.  14 I gave testimony a couple of times now on various ways  15 that a discretionary bonus could be paid.</p> <p>16 Q So someone had to put 432 in this spreadsheet.  17 Who did it?</p> <p>18 A Based on this report, you can't tell who input  19 the \$432.</p> <p>20 Q Is that something that JD Kinsey would do?</p> <p>21 A It's possible that Mr. Kinsey input it. Based  22 on this particular report, I can't see that Mr. Kinsey  23 input this 432; but I've seen a number of instances in  24 which Mr. Kinsey did input inappropriate day codes such  25 as this \$432 under a day rate pay code.</p>

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<p style="text-align: right;">Page 138</p> <p>1 Q Who else besides Mr. Kinsey would -- for the</p> <p>2 time in Puerto Rico for these discretionary amounts as</p> <p>3 you call them, who would be entering them besides</p> <p>4 Mr. Kinsey into the Time Detail Reports?</p> <p>5 A Based on my review of the data, the</p> <p>6 overwhelming majority of the time for which this</p> <p>7 particular pay code was inappropriately selected was</p> <p>8 performed by JD Kinsey.</p> <p>9 Q Who else would have done it though? Anyone</p> <p>10 else?</p> <p>11 A There may have been some payroll clerks that</p> <p>12 utilized this inappropriate day code as well. I would</p> <p>13 characterize other employees as utilizing this</p> <p>14 inappropriate pay code as a relatively minute percentage</p> <p>15 of the population. In other words, Mr. Kinsey, based on</p> <p>16 my review, appears to have been the individual that</p> <p>17 utilized this day code about 90-plus percent of the</p> <p>18 time.</p> <p>19 Q Okay. And I'm -- I'm sorry. I just -- I</p> <p>20 think we're just talking about two different things, all</p> <p>21 right? I feel like you're not answering my question.</p> <p>22 If I want to talk to other people that potentially may</p> <p>23 have been entering in these -- these rates or these --</p> <p>24 these discretionary amounts as you call them, we know</p> <p>25 Mr. Kinsey would enter them. Who else, if anyone, would</p>	<p style="text-align: right;">Page 140</p> <p>1 Time Detail Report to confirm that.</p> <p>2 Q Which we can do, should be able to do.</p> <p>3 February 5th, February 18th -- so in that first week of</p> <p>4 February 5th, I'm counting five days?</p> <p>5 A Looks like five days over a two-week period.</p> <p>6 Q Well, actually -- yeah, five over a two-week</p> <p>7 because that 518.72 is a double entry for Monday. So</p> <p>8 that's actually four in the first week and one on the</p> <p>9 second week, correct?</p> <p>10 Do you agree with that?</p> <p>11 A Based on the -- the hours, it looks like there</p> <p>12 were five days worked over a two-week period.</p> <p>13 Q Okay. And -- and so, again, he was paid</p> <p>14 \$518.72 under the day rate pay code, which brings up his</p> <p>15 hourly pay calculation up to \$4,000, correct?</p> <p>16 A It brings up his gross for the pay period to</p> <p>17 \$4,000.</p> <p>18 Q Yes, which is exactly what 800 times 5 would</p> <p>19 be, right?</p> <p>20 A 800 times 5 is 4,000, yes.</p> <p>21 Q Moving right along with Robby Alvear. In</p> <p>22 Robby Alvear here, we have an example of him being paid</p> <p>23 a flat \$6,400 for the pay period April 30th to May 13th.</p> <p>24 Do you see this?</p> <p>25 A Yes, I do.</p>
<p style="text-align: right;">Page 139</p> <p>1 enter them into the Time Detail Report?</p> <p>2 MR. STUKENBERG: If you know.</p> <p>3 A Mr. Kalman may have done some payroll entry as</p> <p>4 it relates to -- to Puerto Rico. I don't recall any</p> <p>5 other clerks off the top of my head.</p> <p>6 Q (By Mr. Moulton) Would Missy Davis also enter</p> <p>7 in payroll?</p> <p>8 A I don't recall instances in which Missy Davis</p> <p>9 input payroll for Puerto Rico related wages. She</p> <p>10 certainly would have had inquiry access and visibility</p> <p>11 on Puerto Rico wages and -- and may have input some</p> <p>12 small percentage of the population as it relates to</p> <p>13 Puerto Rico entry. But in large part, it was Mr. JD</p> <p>14 Kinsey that input Puerto Rico hourly -- hours and wages.</p> <p>15 Q All right. Moving along with Mr. Tyler</p> <p>16 Halford. Looking at the pay period February 5th to</p> <p>17 February 18th, which is Bates No. Mammoth 535 inside</p> <p>18 Exhibit 170.</p> <p>19 Looking at this pay stub, can you tell me</p> <p>20 how many days he worked?</p> <p>21 A Appears to have worked 80 hours, which would</p> <p>22 be approximately five days.</p> <p>23 Q Approximately or exactly?</p> <p>24 A I would assume that on the face of this it was</p> <p>25 probably exactly five days, but I'd have to look at the</p>	<p style="text-align: right;">Page 141</p> <p>1 Q Okay. Do you happen to know how many days or</p> <p>2 hours he worked?</p> <p>3 A I can't tell that based on the data on this</p> <p>4 earning statement.</p> <p>5 Q So April 30th to May 13th. That's going to be</p> <p>6 this first one here in this Time Detail Report. If we</p> <p>7 want to know how many days he worked, how would we</p> <p>8 figure that out?</p> <p>9 A It appears he has entries on eight days.</p> <p>10 Q Right. He has an \$800 entered for eight days</p> <p>11 for this pay period, correct?</p> <p>12 MR. STUKENBERG: You're talking about the</p> <p>13 two-week pay period?</p> <p>14 MR. MOULTON: Yes.</p> <p>15 A That's correct. There are eight days at day</p> <p>16 rate pay code of \$800 per day.</p> <p>17 Q (By Mr. Moulton) So for every day in this pay</p> <p>18 period that Mr. Alvear worked, he was paid \$800 for each</p> <p>19 one of those days?</p> <p>20 A That appears to be what was input, yes. That</p> <p>21 was -- that was a payroll input error by Mr. Kinsey.</p> <p>22 Q Another error?</p> <p>23 A And Mr. Kinsey was counseled for those errors</p> <p>24 and ultimately terminated for -- for those errors.</p> <p>25 Q Sure. It's all mistakes?</p>

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<p style="text-align: right;">Page 142</p> <p>1 A A minute percentage of the overall population, 2 less than 2 percent; but I understand that you want to 3 throw the statistics out the window.</p> <p>4 MR. STUKENBERG: Dave, what are you 5 thinking for lunch?</p> <p>6 MR. MOULTON: I don't know. Do, like, 30 7 minutes?</p> <p>8 MR. STUKENBERG: Do you think you want to 9 break soon? I don't know whether you're at a stopping 10 point.</p> <p>11 MR. MOULTON: I'm going to have more 12 stuff to cover. So if -- if y'all want to take a break, 13 we can do it now.</p> <p>14 MR. STUKENBERG: I mean, I'm not 15 starving. I just wanted to raise the issue.</p> <p>16 MR. MOULTON: Yeah.</p> <p>17 MR. STUKENBERG: Put it on your radar 18 when you get to a stopping point.</p> <p>19 MR. MOULTON: Yeah. So we'll do a few 20 more. I think, you know, I want to do enough where we 21 can at least see all the iterations of it, you know.</p> <p>22 MR. STUKENBERG: Sure.</p> <p>23 Q (By Mr. Moulton) All right. Mr. Layton, for 24 Mr. Ballesteros, on Mammoth 154, Exhibit 170, again, we 25 have that 37.84 rate, which corresponds to the</p>	<p style="text-align: right;">Page 144</p> <p>1 A We've covered the mechanics behind that.</p> <p>2 Q I want to know how Mr. Ballesteros got it on 3 this one.</p> <p>4 A And I'll reincorporate all my previous 5 testimony on how that occurs.</p> <p>6 Q I want to know for this one though.</p> <p>7 MR. STUKENBERG: I'm just -- just so I'm 8 clear, Dave. Are you asking him the background on the 9 rationale and approval and all of that for this payment 10 of \$107?</p> <p>11 MR. MOULTON: I want to know how that 12 107.84 got on this paycheck.</p> <p>13 MR. STUKENBERG: Okay.</p> <p>14 MR. MOULTON: Does he -- does he know 15 that?</p> <p>16 A That \$107.84 was input into the payroll 17 processing function.</p> <p>18 Q (By Mr. Moulton) You don't know who did it?</p> <p>19 A I can't tell when you keep jumping back and 20 forth and don't show me the detail.</p> <p>21 Q No. I just want to know this before we look 22 at it. Like, do you happen to know?</p> <p>23 A If you'll show me the detail, I'm happy to 24 look at it.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 143</p> <p>1 800-dollar per day storm rate in Puerto Rico according 2 to Exhibit 151, correct?</p> <p>3 A What was the question again?</p> <p>4 Q Yes. Mr. David Ballesteros' rate on this pay 5 stub is 37.84, which corresponds with the 800-dollar PR 6 storm per day rate according to document -- or 7 Exhibit 151, correct?</p> <p>8 A Corresponds with the hourly rate, that's 9 correct.</p> <p>10 Q And so here, again, we see yet another example 11 where someone who works, what, that's six days? You 12 agree that's six days?</p> <p>13 A Appears to be six days at 16 hours a day, yes.</p> <p>14 Q All right. And at \$800 a day gets \$4800. Do 15 you see that?</p> <p>16 A He worked six days, which is 96 hours. 40 of 17 which paid at regular, 56 at overtime.</p> <p>18 Q Okay. And he gets a \$107.84 boost up to 19 \$4,800, right?</p> <p>20 MR. STUKENBERG: Objection, form.</p> <p>21 A It's a hundred-and-seven-dollar and 22 eighty-four-cent discretionary bonus that was paid under 23 an inaccurate line item or pay code.</p> <p>24 Q (By Mr. Moulton) How did Mr. Ballesteros get 25 this 107.84 on his paycheck?</p>	<p style="text-align: right;">Page 145</p> <p>1 A If you're asking me from memory on over a 2 hundred thousand payroll transactions on who input 3 this --</p> <p>4 Q All right.</p> <p>5 A -- no.</p> <p>6 Q So safe to -- safe to -- safe to assume you 7 have no independent memory of this; is that correct?</p> <p>8 You have -- you could only -- you're just as good as us 9 at looking at the payroll records, right?</p> <p>10 Is that right?</p> <p>11 MR. STUKENBERG: Objection, form.</p> <p>12 Q (By Mr. Moulton) You're not -- okay. So 13 your -- but your answer isn't going to be informed by 14 any particular memory on this particular transaction, 15 right?</p> <p>16 MR. STUKENBERG: On this particular 17 transaction, not the process in general.</p> <p>18 MR. MOULTON: Right.</p> <p>19 A On this particular transaction, I have no 20 specific knowledge in regards to inputted -- who input 21 the amount on this. One, this period of time that you 22 keep flipping back and forth --</p> <p>23 Q (By Mr. Moulton) Yeah, I'm trying to find it. 24 I finally -- I think I finally found the right period. 25 This -- he has so many payroll records so -- that are</p>

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<p style="text-align: right;">Page 146</p> <p>1 blank. I'm -- I'm trying to find it for you,  2 Mr. Layton. I'm -- I'm getting there.  3 I think we're in March, right?  4 March 19th to April 1st?  5 Okay. March 19th to April 1st --  6 <b>A JD Kinsey input the \$107.84 as well as the</b>  7 <b>hours for each one of the days inside of this particular</b>  8 <b>pay period that's reflected on the pay stub.</b>  9 Q Okay. So and -- and just -- so this agrees  10 with what we were -- what me and -- me and you both were  11 thinking. 96 is going to be six days; and it's going to  12 have this \$107.84 added because there was some sort of  13 approval process that went through payroll to put it on  14 there, right?  15 <b>A I believe that mischaracterizes my previous</b>  16 <b>testimony, all of which I'll reincorporate.</b>  17 Q Who in payroll is -- is dealing with the --  18 the approval process?  19 <b>A I don't know that I understand the -- the</b>  20 <b>question. Payroll is responsible for inputting data.</b>  21 Q Uh-huh.  22 <b>A That process goes through -- once input,</b>  23 <b>through an approval process of -- of supervisors, many</b>  24 <b>of which are -- are outside of quote, unquote, payroll.</b>  25 Q Okay. Well -- so I'm just having a hard time</p>	<p style="text-align: right;">Page 148</p> <p>1 <b>some input from time to time.</b>  2 Q Who does she work for, Beth Stone?  3 <b>A Beth Stone would have been a Mammoth Energy,</b>  4 <b>Inc., employee.</b>  5 Q What about Wheeler?  6 <b>A Wheeler was employed by Higher Power.</b>  7 Q So -- and if I understand right, you said  8 Kinsey is just a clerk. He's not one who gets to make  9 decisions about how people get paid or what they get  10 paid?  11 <b>A That's correct. Mr. Kinsey is just a payroll</b>  12 <b>clerk.</b>  13 Q Okay. So for Mr. Kinsey, for example, to  14 enter in one of these day rate adjustments, he is going  15 to be doing it based on an approval made by someone  16 else?  17 <b>A He would have been doing it based on the</b>  18 <b>direction of someone. Any input that Mr. Kinsey made in</b>  19 <b>regards to a discretionary bonus would have had to have</b>  20 <b>been supervisor-approved based on either the direction</b>  21 <b>of that payment or after Mr. Kinsey input that amount in</b>  22 <b>order for payroll to be processed.</b>  23 Q Okay. So on the island during the time period  24 that these guys were out there working, who -- who are  25 the supervisors that would do this approval?</p>
<p style="text-align: right;">Page 147</p> <p>1 understanding the process because I know J Kinsey inputs  2 them or at least is a person that -- and Mr. Kalman  3 could be inputting them actually into the payroll  4 system, correct?  5 You agree with that?  6 <b>A Among others, yes.</b>  7 Q Okay. And -- but you -- I asked you over and  8 over and you couldn't think of anyone else.  9 <b>A I -- I named two names and said there were</b>  10 <b>likely others.</b>  11 Q Okay. But you can't -- sitting here today,  12 you're not able to tell me the names of any others?  13 MR. STUKENBERG: I thought he said Missy  14 Davis.  15 MR. MOULTON: He said no.  16 MR. STUKENBERG: Okay.  17 <b>A I did say Missy Davis may -- may have input</b>  18 <b>some small population of -- of payroll amounts.</b>  19 Q (By Mr. Moulton) Okay. I thought you said no  20 on that. So we've got Kinsey, Kalman, Davis. Anyone  21 else that you can remember?  22 <b>A Shelly Wheeler may have had some nominal input</b>  23 <b>from time to time.</b>  24 Q Anyone else?  25 <b>A It's possible that Beth Stone may have done</b></p>	<p style="text-align: right;">Page 149</p> <p>1 <b>A There would be any number of -- of</b>  2 <b>supervisors that -- that would have been capable of</b>  3 <b>approving a discretionary bonus.</b>  4 Q By -- okay. So you're saying it's probably  5 too many names to -- to remember?  6 <b>A That would have been a -- a massive population</b>  7 <b>over a multimonth period.</b>  8 Q Okay. Can you tell me what level of -- of  9 position would have that authority to make these  10 adjustments under the day rate here in the pay stubs?  11 <b>A Regards to specific levels, could have been</b>  12 <b>approved by president, vice president, COO. There could</b>  13 <b>have been probably some other administrative managers in</b>  14 <b>Puerto Rico that -- that could have approved</b>  15 <b>discretionary bonuses as well.</b>  16 Q I think for the guys that worked on  17 December 23rd there was, like, a "HOL" code in the  18 payroll. Do you remember that?  19 <b>A Holiday is -- is a pay code that -- that</b>  20 <b>exists.</b>  21 Q Okay. Who would approve the holiday pay code?  22 <b>A Holiday pay codes --</b>  23 Q And I -- you know, I don't mean the code. I  24 mean the amounts that would come out for holiday pay.  25 <b>A The -- the amounts for -- for holiday pay</b></p>

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<p style="text-align: right;">Page 150</p> <p>1 would have been no different than any other payroll  2 processing in regards to formal approval of payroll.  3 Q Okay. Now, from my review, it looks like  4 people that were there on December 23rd, or thereabouts,  5 of 2017 got \$1,111.11 added to their payroll; is that  6 right?  7 A That didn't have anything to do with whether  8 they were in Puerto Rico or whether they were in the  9 lower 48. That was a discretionary holiday payment --  10 Q Uh-huh.  11 A -- that was paid to all employees of Higher  12 Power, 5 Star, and Cobra Energy that were employed as of  13 that date regardless of whether they were in the lower  14 48 or Puerto Rico.  15 Q And who approved that -- that particular  16 holiday bonus?  17 A That particular holiday bonus was approved for  18 each of those entities by myself and by Mr. Straehla in  19 our capacity at each one of those entities.  20 Q Okay. Now, you guys weren't doing the  21 approvals back to these day rate adjustments, right?  22 A No, sir.  23 Q Okay. So that's going to be president --  24 presidents, vice presidents, COOs, and administrative  25 managers is what you said. Anyone else?</p>	<p style="text-align: right;">Page 152</p> <p>1 Q Okay. Of those folks, which ones could  2 authorize the day rate adjustment?  3 A Of those senior-level individuals, any of  4 which likely could have approved discretionary bonuses  5 inside of the -- the payroll processing function.  6 Q Okay. Do you remember any names?  7 A I don't recall specific names of his direct  8 reports.  9 Q I mean, specific --  10 A I gave you --  11 Q Yeah. I mean --  12 A -- positions.  13 Q Yeah.  14 A If you're asking me for a roll call on  15 names --  16 Q No, I'm not. I'm just asking specifically. I  17 just want to make sure because sometimes people have  18 come up with all sorts of things they couldn't remember  19 in their deposition by the time we get to trial. So I  20 want to make sure today.  21 You don't recall any names of anyone in  22 particular at Higher Power besides Robert Malcom that  23 could approve a day rate adjustment?  24 A I referenced Mrs. Wheeler earlier in regards  25 to -- to her capacity at Higher Power. I've referenced</p>
<p style="text-align: right;">Page 151</p> <p>1 A There may be other mid-level managers that --  2 that would have been able to -- to approve it. Those  3 would have been the -- the primary approvers.  4 Q Okay. So for Higher Power that would have  5 been Robert Malcom?  6 A Yes, Mr. Malcom was -- was the president.  7 Q Okay. Who was his vice president?  8 A I don't recall the -- the name of -- of his  9 vice president.  10 Q Who was -- who was the COO of Higher Power?  11 A I don't believe Higher Power had a -- a COO.  12 Q Okay. And what admin or manager or managers  13 with Higher Power would have been qualified to approve  14 the day rate adjustments?  15 A The discretionary bonuses paid under this day  16 rate item? There could have been -- Mr. Malcom, any one  17 of his direct reports. I don't recall their -- their  18 specific names.  19 Q Okay. Well, which positions would report to  20 Robert Malcom?  21 A Mr. Malcom would have safety report to him,  22 DOT report to him. He would have had some clerical  23 staff that -- that would report to him, and then he  24 would have a operational foreman and general foreman  25 that -- that would report to him.</p>	<p style="text-align: right;">Page 153</p> <p>1 several positions.  2 Q But I'm asking about names.  3 A Names, the only name I can think of offhand  4 could be Ken Godwin would be a senior-level guy that --  5 that could have possibly approved some discretionary --  6 approved or recommended some discretionary payments.  7 Ms. Wheeler is another possibly, and then I gave you  8 several different positions.  9 Q Do you know the criteria that folks like Ken  10 Godwin and Robert Malcom or Ms. Wheeler would use to  11 determine whether or not a day rate adjustment would be  12 made?  13 MR. STUKENBERG: Objection, form.  14 A The process in place for --  15 Q (By Mr. Moulton) No, I want to know criteria,  16 not the process. We've covered that. I want to know if  17 there's any criteria; and if you know what the criteria  18 are, what are they?  19 A The criteria, which also leans on the  20 process --  21 Q Okay.  22 A -- is that supervisors have the ability to  23 recommend discretionary bonuses. The input in these  24 particular instances that you brought up was via an  25 incorrect pay code in relation to these discretionary</p>

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<p style="text-align: right;">Page 154</p> <p>1 bonuses, but any of these positions or personnel that  2 I've mentioned have the ability to -- to recommend a  3 discretionary bonus.</p> <p>4 Q Now, was -- were these -- these discretionary  5 bonuses, were they made or the -- the decision-making,  6 did it happen paycheck to paycheck; or did it happen,  7 like, overall for, "Hey, this particular employee we're  8 going to do it, this one we're not"? In general, how  9 did -- how did that work?</p> <p>10 A Well, by its nature discretionary bonuses have  11 discretion. So sometimes they're made. Sometimes  12 they're not. The -- the process to identify when and --  13 and how much is a -- very much a subjective process  14 based on what that manager determines, you know, quality  15 of -- of work performed by the employee, nature of the  16 work performed by the employee, conditions, things of  17 that nature among others may influence whether or not  18 any discretionary bonus is paid and what that amount may  19 or may not be.</p> <p>20 Q Okay. So you're -- sitting here today, you  21 don't know exactly what criteria Mr. Godwin or  22 Ms. Wheeler or Mr. Malcom would have used?</p> <p>23 A I just gave you a number of criteria in  24 regards to baseline criteria as well as -- as other  25 criteria that they would utilize from time to time.</p>	<p style="text-align: right;">Page 156</p> <p>1 asking about the documents, if any, that exist that  2 actually are the, you know, "send this to him" kind of  3 documents. So we're talking about something else. Just  4 listen to my question.</p> <p>5 Do you know or do you -- do you -- do you  6 have any documents that would show the criteria that  7 Mr. Godwin or Mr. Malcom or Ms. Wheeler would use to  8 determine whether or not a particular day rate  9 adjustment should be made?</p> <p>10 A As I mentioned earlier, this quote, unquote,  11 day rate adjustment that you've characterized is a pay  12 code that's an error in selection of pay code. In  13 regards to the criteria that any of these employees may  14 utilize, there may be some correspondence in their  15 emails, of which you have thousands, that -- that may go  16 into criteria of safety, job conditions, hours, things  17 of that nature.</p> <p>18 Q Okay. So other than that, you're not aware of  19 any specifically?</p> <p>20 A If you're asking me to pull one document out  21 of the thousands of documents that have been produced,  22 I -- I can't point you to a single Bates stamped  23 document.</p> <p>24 Q There's no -- what I'm getting at is that  25 you're not aware of a document that says, you know, day</p>
<p style="text-align: right;">Page 155</p> <p>1 Q Okay. And how do you know what criteria  2 Ms. Godwin used -- or Mr. Godwin or Ms. Wheeler or  3 Mr. Malcom used?</p> <p>4 A Based on my position at Higher Power and  5 conversations with senior management, I'm aware of -- of  6 criteria that they utilize from time to time in regards  7 to any discretionary amounts that may be paid or not  8 paid, including conditions, job performance, safety, you  9 know, incidents, hours, a number of items.</p> <p>10 Q What's your position at Higher Power?</p> <p>11 A I'm the chief financial officer of Higher  12 Power.</p> <p>13 Q Do you have any documents that would show what  14 criteria Ms. Wheeler or Mr. Malcom or Mr. Godwin were  15 using to approve or disapprove these supposed  16 discretionary additions to the payroll?</p> <p>17 A I believe we covered potential documents that  18 may exist earlier.</p> <p>19 Q Yeah, but that was something else.</p> <p>20 A No, it wasn't something else --</p> <p>21 Q It was.</p> <p>22 A -- and you continue to mischaracterize my  23 testimony.</p> <p>24 Q I am asking are you aware of any documents  25 that demonstrate the criteria they used. Before I was</p>	<p style="text-align: right;">Page 157</p> <p>1 rate adjustment or discretionary bonus, whatever you  2 want to call it, criteria sheet that someone like Ken  3 Godwin or Robert Malcom or Ms. Wheeler would use.  4 That's what I'm asking.</p> <p>5 Are you aware of that?</p> <p>6 A Of a form called criteria sheet? No. I've  7 not seen a criteria sheet form with boxes checked off,  8 you know, one, two, three four, five.</p> <p>9 Q Or anything like that?</p> <p>10 A That's not what I testified to.</p> <p>11 Q No. I'm asking are you -- because you want to  12 make my question to be something you want to say no to.  13 So I'm going to expand my question to be: Did you see  14 any documents that are like that?</p> <p>15 MR. STUKENBERG: Objection, form.</p> <p>16 A What I've said is there may be correspondence  17 that's produced that incorporates those items. If  18 you're asking whether or not there is a specified form  19 that I've seen --</p> <p>20 Q (By Mr. Moulton) Uh-huh.</p> <p>21 A -- that checks -- check boxes those items,  22 I've not seen that.</p> <p>23 Q Or even a report where they could, like, write  24 up a report about why they're giving a discretionary  25 amount? Have you seen anything like that?</p>

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<p style="text-align: right;">Page 158</p> <p>1 A As I mentioned, there may be emails that have 2 been produced.</p> <p>3 Q Besides those emails that you've mentioned, is 4 there any -- are you aware of any, like, documents 5 besides emails where they would do, like, a write-up 6 about why they would be approving or not approving a day 7 rate adjustment?</p> <p>8 A In regards to discretionary bonuses --</p> <p>9 Q Uh-huh.</p> <p>10 A -- which is what we're really talking about --</p> <p>11 Q Uh-huh.</p> <p>12 A -- I've seen a number of recommendations via, 13 you know -- in my capacity as the CFO of Higher Power, 14 in my experience, I've been recommendations from 15 managers in regards to discretionary bonuses in the form 16 of both email as well as, on rare occasion, a PAF that 17 may direct a discretionary bonus.</p> <p>18 Q All right. Moving right along with 19 Mr. Ballesteros. Pay period March 5th to March 18th, 20 got a hundred seventy-six hours worked. We've got some 21 rates, hourly rates and some overtime here. And under 22 "day rate" there is an adjustment of \$323.84.</p> <p>23 Do you agree with that?</p> <p>24 A There's an amount in the day rate line, yes --</p> <p>25 Q Yep.</p>	<p style="text-align: right;">Page 160</p> <p>1 hours a day for seven days.</p> <p>2 Q And he can still get a target rate when he 3 works less than a full week?</p> <p>4 A No. If -- if an employee works less than a 5 full week, then they get their hourly and overtime rate 6 and it calculates to whatever the mechanics calculate.</p> <p>7 Q Well, we've just been through, I don't know, 8 five or six examples so far of where they got exactly 9 the target rate even though they didn't work a full 10 week, correct?</p> <p>11 A What they got were discretionary bonuses and 12 the -- the decision, as it relates to employee goodwill, 13 that gets these employees to what they perceive as -- as 14 target rates had they worked the full amount of hours 15 and days required. The amounts were paid appropriately 16 for the days they worked; and in this case, a 17 discretionary payment was made, as I mentioned, for 18 employee goodwill to -- to give this employee a 19 discretionary bonus.</p> <p>20 Q So -- well, we have another paycheck, which is 21 exactly the same thing; but it's a different pay period. 22 January 22nd to February 4th, yet again, for 23 Mr. Ballesteros. You're saying this \$323.84 here that's 24 added under day rate is both incorrectly marked on here 25 and is really a discretionary bonus? That's your</p>
<p style="text-align: right;">Page 159</p> <p>1 A -- of 323.84.</p> <p>2 Q And looking at this, can you tell me how many 3 days he worked in this pay period?</p> <p>4 A A hundred seventy-six divided by 16 would 5 appear to be 11 days.</p> <p>6 Q All right. And so for 11 days, if you were 7 going to get his target rate, you would get 8,800, 8 correct?</p> <p>9 A For 11 days, he would be paid, in this case, 10 80 hours at 37.84 and 96 at 56.76 getting to the 11 extended amounts of almost \$8500.</p> <p>12 Q So is the target rate the hourly, or is the 13 target rate the day rate?</p> <p>14 A They're paid an hourly rate and --</p> <p>15 Q I want to know --</p> <p>16 A -- if --</p> <p>17 Q -- what the target is.</p> <p>18 A If an employee --</p> <p>19 Q Uh-huh --</p> <p>20 A -- works a full week or is available to work 21 each day at 16 hours a day, they will get very close to 22 the targeted earnings. In no event does that ever 23 equal, in this case, \$800 to the penny. It's \$800 and 24 whatever per day on an average if an employee works a 25 full week or is available to work the full week at 16</p>	<p style="text-align: right;">Page 161</p> <p>1 testimony?</p> <p>2 A That's correct, and there are numerous 3 examples where a discretionary payment such --</p> <p>4 MR. MOULTON: Objection, nonresponsive.</p> <p>5 A -- as this were not paid, but I understand you 6 don't want to talk about those.</p> <p>7 MR. MOULTON: Objection, nonresponsive.</p> <p>8 That wasn't my question.</p> <p>9 Q (By Mr. Moulton) Okay. January 8th to 10 January 21st, David Ballesteros, can you tell me how 11 many days he worked this pay period?</p> <p>12 A I would guess that -- 208 divided by 16.</p> <p>13 Q We can make it easy --</p> <p>14 A Thirteen days, say.</p> <p>15 Q There you go. I knew you were a math genius.</p> <p>16 A And if you insult me one more time, we're 17 going to call a quick end to this because I've had about 18 enough of your unprofessionalism.</p> <p>19 Q I -- look, Man, I --</p> <p>20 A You call me a math genius --</p> <p>21 Q And you are a --</p> <p>22 A -- I'll call you a law genius and --</p> <p>23 Q You are a math --</p> <p>24 A -- this is the only -- this is the only format 25 where you're going to be this unprofessional with me.</p>

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<p style="text-align: right;">Page 162</p> <p>1 MR. STUKENBERG: Yeah. Dave, let's try</p> <p>2 to keep it professional. Come on.</p> <p>3 Q (By Mr. Moulton) Well, no. I -- I got it.</p> <p>4 I -- I'm -- I consider myself to be a fellow math nerd.</p> <p>5 So I was kind of like -- I'm happy to talk to one. So</p> <p>6 sorry. I don't mean to be disrespectful.</p> <p>7 All right. Mr. Ballesteros, we have yet</p> <p>8 another example of where -- 13 days worked and his PR</p> <p>9 storm day rate is 800. So 13 times 800 would be 10,400,</p> <p>10 which is what he was paid, correct?</p> <p>11 A That was his gross earnings.</p> <p>12 Q Yes. And y'all got there -- you got him to</p> <p>13 that 10,400 by giving him the \$107.52, correct?</p> <p>14 A We paid a discretionary amount of 107.52.</p> <p>15 That's correct.</p> <p>16 Q Oh, and so the next one here in Mammoth 170</p> <p>17 inside Exhibit 170, we have a Christmas pay stub, like</p> <p>18 we were talking about earlier, where we see the holiday</p> <p>19 bonus of 1111.11.</p> <p>20 Do you see that?</p> <p>21 A I see that.</p> <p>22 Q And that's the bonus you were talking about</p> <p>23 earlier?</p> <p>24 A Yes, sir.</p> <p>25 Q Okay. If we back that out, we're going to</p>	<p style="text-align: right;">Page 164</p> <p>1 can explain that this is an hourly employee. So day</p> <p>2 rate would not be an appropriate selection for pay code.</p> <p>3 Q Okay. So this is a mistake?</p> <p>4 A That is an error, yes.</p> <p>5 MR. STUKENBERG: You want to take a</p> <p>6 lunch, Dave?</p> <p>7 MR. MOULTON: Yeah, we can do a quick</p> <p>8 lunch. Want to do, like, 30 minutes like we did</p> <p>9 yesterday?</p> <p>10 MR. STUKENBERG: Yeah.</p> <p>11 THE VIDEOGRAPHER: All right. We are off</p> <p>12 the record at 12:35.</p> <p>13 (Recess from 12:35 p.m. to 1:26 p.m.)</p> <p>14 THE VIDEOGRAPHER: All right. We are</p> <p>15 back on the record at 1:26 p.m.</p> <p>16 Q (By Mr. Moulton) All right. Mr. Layton, we're</p> <p>17 going to be talking more about some of these payroll</p> <p>18 records here in a minute; but I also want to cover some</p> <p>19 other things and make sure we don't run out of time.</p> <p>20 (Plaintiffs' Exhibit 171 marked.)</p> <p>21 Q (By Mr. Moulton) I want to show you what's</p> <p>22 been marked as Plaintiff's Exhibit 171. Let's try that</p> <p>23 again. You should be able to see on your screen a copy</p> <p>24 of a Form 10-K for Mammoth Energy Services, Inc.</p> <p>25 A Yeah. It's largely illegible, but that's --</p>
<p style="text-align: right;">Page 163</p> <p>1 have -- 8800 is what his pay would be without that</p> <p>2 holiday bonus; is that right?</p> <p>3 A Yes.</p> <p>4 Q Okay. And 8800 comes out to be 800 -- or is</p> <p>5 equal to 800 times 11, right?</p> <p>6 A That would be the math, yeah.</p> <p>7 Q And that would also correspond to 16 hours</p> <p>8 times 11, which is 176 as we show here, right?</p> <p>9 A There were 176 hours worked, yes.</p> <p>10 Q Actually I think I got that -- so that's 11</p> <p>11 days, right? Yeah.</p> <p>12 A Yeah.</p> <p>13 Q Let's back that up. 11 days because 11 days</p> <p>14 worked would be 176 hours, right?</p> <p>15 A That's correct.</p> <p>16 Q Okay. And 11 times 800 would be your 8800,</p> <p>17 correct?</p> <p>18 A 11 times 800 is 8800.</p> <p>19 Q Yes. So we got that corrected.</p> <p>20 Okay. Now, let's go down to the next</p> <p>21 page -- I mean, up to this point he's been \$800 a day,</p> <p>22 but this one looks like it's a little different. Can</p> <p>23 you -- can you explain the 1400 as a -- as a day rate</p> <p>24 here?</p> <p>25 A I can't explain what's in that pay code. I</p>	<p style="text-align: right;">Page 165</p> <p>1 that's what the document appears to be.</p> <p>2 Q Okay. As CFO are you involved in preparing</p> <p>3 this document?</p> <p>4 A Yes.</p> <p>5 Q So you're very familiar with the 2017 10-K?</p> <p>6 A Yes, sir.</p> <p>7 Q Okay.</p> <p>8 All right. This is a very long document,</p> <p>9 but there's only a certain section that I want to focus</p> <p>10 on. Let's try this. Still blurry for you?</p> <p>11 A Yes.</p> <p>12 Q Okay. Is that clearer?</p> <p>13 A It's better, yes.</p> <p>14 Q Okay. So on Page Mammoth 4,079 in this</p> <p>15 exhibit, there's a listing of lawsuits on Mammoth Energy</p> <p>16 Services, Inc.'s, Form 10-K, correct?</p> <p>17 A Yes, sir.</p> <p>18 Q Okay. And several of them are overtime</p> <p>19 lawsuits, as you can see highlighted on my screen,</p> <p>20 right -- or your screen?</p> <p>21 A I see three -- yeah.</p> <p>22 Q I see five.</p> <p>23 A Yeah. I can't count when it's moving around,</p> <p>24 but we'll -- we'll go with five.</p> <p>25 Q Okay. So the first one, the June 3rd, 2015,</p>

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<p style="text-align: right;">Page 166</p> <p>1 action involves, it says, William Crigler versus</p> <p>2 Stingray Pressure Pumping.</p> <p>3 Do you see that?</p> <p>4 <b>A I do.</b></p> <p>5 Q Okay. Did you provide any testimony in that</p> <p>6 case?</p> <p>7 <b>A I don't believe I've provided any testimony in</b></p> <p>8 <b>that case, no, sir.</b></p> <p>9 Q Okay. Do you know what the allegations were</p> <p>10 in that case?</p> <p>11 <b>A As stated in here.</b></p> <p>12 Q Other than --</p> <p>13 <b>A You want me to read it to you or --</b></p> <p>14 Q No. I'm asking -- obviously we can read the</p> <p>15 document. I want to know if you have personal knowledge</p> <p>16 of what the allegations were in that case other than</p> <p>17 what's written in this document.</p> <p>18 <b>A This -- this document is self-explanatory.</b></p> <p>19 Q Do you know what kind of violation was at</p> <p>20 stake?</p> <p>21 <b>A In regards to this June 3rd, 2015, item?</b></p> <p>22 Q Yes.</p> <p>23 <b>A That was a wage-an-hour item.</b></p> <p>24 Q Okay. And I'm -- what I'm getting at, do you</p> <p>25 know if it involved day rates?</p>	<p style="text-align: right;">Page 168</p> <p>1 of overtime allegation in that case?</p> <p>2 <b>A I don't recall the -- the specific details</b></p> <p>3 <b>inside of -- of this particular item.</b></p> <p>4 Q Okay. On the next one that's highlighted,</p> <p>5 August 1st, 2016, we have the Caffey versus Redback</p> <p>6 Energy Services, LLC?</p> <p>7 <b>A Yes, sir.</b></p> <p>8 Q Okay. Do you recall what the allegations were</p> <p>9 in that case?</p> <p>10 <b>A As stated, has to do with worker's overtime.</b></p> <p>11 Q What kind of overtime case? Do you know?</p> <p>12 <b>A It's a worker's overtime case in compliance</b></p> <p>13 <b>with the FLSA, as it -- as it says here.</b></p> <p>14 Q Do you know if it was misclassification or</p> <p>15 a -- paying a day rate, straight time for overtime? Do</p> <p>16 you remember anything about the claims?</p> <p>17 <b>A I don't recall the specificity of the -- the</b></p> <p>18 <b>allegations inside of that; but as referenced here,</b></p> <p>19 <b>it -- it's an overtime matter.</b></p> <p>20 Q Okay. The next one, September 27, 2016, we</p> <p>21 have another one Drake versus Redback. It's also an</p> <p>22 overtime case, it appears; and do you know what type of</p> <p>23 overtime case it was?</p> <p>24 <b>A I think in the Drake matter, as I -- as I</b></p> <p>25 <b>recall, that matter did -- did contain some day rate</b></p>
<p style="text-align: right;">Page 167</p> <p>1 <b>A I don't recall the specifics inside of that</b></p> <p>2 <b>matter.</b></p> <p>3 Q Okay.</p> <p>4 <b>A -- or the -- any allegations asserted by</b></p> <p>5 <b>plaintiffs in detail.</b></p> <p>6 Q Okay. So you -- you don't know what kind of</p> <p>7 overtime allegation it was. You just know it was an</p> <p>8 overtime case?</p> <p>9 <b>A Generally speaking, yes.</b></p> <p>10 Q Okay. What -- what -- so actually, before I</p> <p>11 get there, let's go to the next one. On December 2nd,</p> <p>12 2015, there's another case here referenced, Bison versus</p> <p>13 Field Services, LLC.</p> <p>14 Do you see that?</p> <p>15 <b>A I don't see a Bison verses Field Services. I</b></p> <p>16 <b>see Bison Drilling and Field Services.</b></p> <p>17 Q Oh, I'm sorry. It's John Talamantez versus</p> <p>18 Bison and -- Bison Drilling and Field Services, LLC.</p> <p>19 Do you see that there?</p> <p>20 <b>A Yes, sir.</b></p> <p>21 Q Which of those entities is a -- is part of the</p> <p>22 Mammoth umbrella?</p> <p>23 <b>A Bison Drilling and Field Services is part of</b></p> <p>24 <b>the Mammoth umbrella.</b></p> <p>25 Q Okay. And what were the -- what was the type</p>	<p style="text-align: right;">Page 169</p> <p>1 assertions by plaintiffs, among other items.</p> <p>2 Q On the next one, January 26th, 2017, Crosby</p> <p>3 versus Stingray Pressure Pumping also an overtime case,</p> <p>4 correct?</p> <p>5 <b>A Yes, sir.</b></p> <p>6 Q Okay. Did it involve day rates, or do you</p> <p>7 remember the kind of allegation it was?</p> <p>8 <b>A I don't recall any assertions of -- of day</b></p> <p>9 <b>rates inside of -- of that particular matter.</b></p> <p>10 Q Okay. Do you recall anything else about that</p> <p>11 claim?</p> <p>12 <b>A Just as stated here.</b></p> <p>13 Q Okay. You don't -- so you don't know if it</p> <p>14 was, like, a misclass case or straight time for</p> <p>15 overtime?</p> <p>16 <b>A I don't believe that based on my recollection</b></p> <p>17 <b>that this was a misclassification case.</b></p> <p>18 Q Okay. So with the companies that are</p> <p>19 mentioned in these lawsuits -- so we've got Stingray</p> <p>20 Pressure Pumping, Bison Drilling and Field Services,</p> <p>21 Redback Energy, and Redback Coil Tubing, and Stingray</p> <p>22 Pressure Pumping, with these entities, do you have any</p> <p>23 role that's related to them?</p> <p>24 <b>A I'm the -- currently the chief financial</b></p> <p>25 <b>officer of -- of each of those entities.</b></p>

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<p style="text-align: right;">Page 170</p> <p>1 Q Okay. Back in 2017 when this was -- when this 2 report was made, were you the CFO for these companies 3 back then as well?</p> <p>4 A Yes, sir, I was.</p> <p>5 Q Okay. Did you participate as far as -- let me 6 ask you this: What -- what role did you play at all -- 7 if at all with these cases that are mentioned here?</p> <p>8 A I would have been casually aware of these 9 cases. In regards to depositions or testimony in these 10 cases, I don't believe I offered any depositions or 11 testimony in -- in any of these matters.</p> <p>12 Q Okay. Did you attend depositions? Not -- not 13 to testify, but to actually observe?</p> <p>14 A I don't recall any depositions on -- on these 15 particular matters.</p> <p>16 Q Are you aware of any Department of Labor 17 audits into Mammoth Energy Services, Inc., or any of the 18 companies in its umbrella?</p> <p>19 A DOL audits?</p> <p>20 Q Yeah, like, Department of Labor complaints, 21 audits?</p> <p>22 A I'm sure there -- there may have been some DOL 23 complaints from time to time lodged against various 24 entities inside the broader Mammoth portfolio. I'm not 25 aware of any DOL audits, so to speak; but there were --</p>	<p style="text-align: right;">Page 172</p> <p>1 A In regards to me individually having to 2 provide information, no, I don't think I individually 3 have provided information. We have, through these legal 4 entities that I mentioned earlier, provided information 5 to counsel, which would have then been provided to the 6 DOL.</p> <p>7 Q Okay. So not personally. You weren't -- you 8 weren't directly involved -- you weren't directly 9 talking to DOL offices or agents; is that fair?</p> <p>10 A That's fair. (Plaintiffs' Exhibit 172 marked.)</p> <p>12 Q (By Mr. Moulton) All right. I'm going to show 13 you what's been marked as Plaintiff's Exhibit 172. 14 Looks like I stuck the exhibit sticker in the middle of 15 the page; but it'll work.</p> <p>16 MR. STUKENBERG: 172?</p> <p>17 MR. MOULTON: Yes, sir. I think -- we're 18 going in order, right? We good?</p> <p>19 THE REPORTER: (Nods head).</p> <p>20 MR. MOULTON: Yeah, 172.</p> <p>21 Q (By Mr. Moulton) And back to our earlier 22 discussion about trying to find any documentation 23 about -- about what you call are these discretionary 24 payments that are -- that we've seen on the pay stubs. 25 I'm trying to find documents about it, and I want to ask</p>
<p style="text-align: right;">Page 171</p> <p>1 there may have been some complaints and were from time 2 to time.</p> <p>3 Q Can you -- do you recall the name of any of 4 the entities involved in any DOL complaints or audits?</p> <p>5 A The only DOL complaints that I recall off the 6 top of my head related to Higher Power, Ivory Freight, 7 and potentially Silverback.</p> <p>8 Q Do you remember the outcome of any of those?</p> <p>9 A I believe in those instances, those complaints 10 were dismissed.</p> <p>11 Q Okay. Have you ever had to meet with the 12 Department of Labor as part of any of these -- any 13 complaints or audits?</p> <p>14 A Are you asking me whether or not I've had to 15 offer testimony to the DOL?</p> <p>16 Q No, because, like, they probably wouldn't -- 17 they wouldn't really take you -- they wouldn't call you 18 into a deposition unless they had gotten to the 19 litigation stage obviously. What they typically do when 20 they're doing -- investigating a complaint or audit, 21 they may visit and you may be required or asked to 22 provide information to them not in a -- not in a 23 deposition setting.</p> <p>24 Does that ring a bell to you? Has that 25 ever happened to you?</p>	<p style="text-align: right;">Page 173</p> <p>1 you is -- is this an example of what you were talking 2 about, emails that would deal with that?</p> <p>3 A This would be -- appears to be an example of a 4 proposal for some discretionary amounts. Yes, this 5 would be an example in that context.</p> <p>6 Q Okay. Is it -- would you call this, like, a 7 typical example of that?</p> <p>8 MR. STUKENBERG: Objection, form.</p> <p>9 A This is -- this is an example of discretionary 10 bonus amounts. In regards to what is typical or not 11 typical, I don't know what that connotation is; but this 12 is a specific example.</p> <p>13 Q (By Mr. Moulton) Okay. Is this one of the 14 ones that you were thinking about when we were talking 15 earlier?</p> <p>16 A Not specifically, but this is an example.</p> <p>17 Q Okay. So it looks like it involves Shelly 18 Wheeler, Alexander Kalman, Missy Davis, JD Kinsey, 19 Bethany Stone, and Michelle Poling. Are you able to 20 tell me which of those folks would have been the ones to 21 actually approve the -- the payroll adjustment?</p> <p>22 A So in this particular matter, Shelly Wheeler, 23 I think, is one of the individuals that I mentioned 24 earlier that may receive input or direction from 25 operational managers in regards to payroll processing</p>

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<p style="text-align: right;">Page 174</p> <p>1 mechanisms. In the ground in Puerto Rico, JD Kinsey 2 generally input a bunch of that information, may have 3 then been subsequently approved by any combination of 4 Michelle Poling, Beth Stone, Alex Kalman on -- on one 5 step. And then ultimately finally approved, in regards 6 to overall payroll, by Mr. Beagle.</p> <p>7 Q Okay. So in that chain you just said -- and I 8 don't recall you saying this earlier. So I'm -- I need 9 to ask you about it now. Your -- you mentioned some 10 operational people maybe giving input to Ms. Wheeler 11 about the -- the adjustments? Is that a fair 12 characterization of what you just said?</p> <p>13 A I believe earlier we referenced some 14 communication between Mr. Malcom as well as some of 15 Mr. Malcom's direct reports and what those positions 16 looked like and Ms. Wheeler, as it relates to Higher 17 Power.</p> <p>18 Q Okay. So when you said "operations" now, 19 you're referring to what we talked about earlier with 20 those folks?</p> <p>21 A In regards to operational approval, yeah, we 22 discussed some of that input approval dialogue earlier.</p> <p>23 Q Okay. Does this -- do the -- does the 24 approval process extend down to a foreman?</p> <p>25 A A foreman may be able to provide some input in</p>	<p style="text-align: right;">Page 176</p> <p>1 A Well, punch in/punch out was functionally 2 unavailable because the island didn't have power. So 3 that ability was impaired at best. What we did have was 4 a show-up time at a prescribed location for the crews 5 for which they would generally have a safety meeting. 6 That show-up time was generally, say, 6:00 a.m.; and 7 those employees would meet. Supervisors would talk 8 about safety, take roll as far as who was there or not 9 there. That would be the genesis for whether or not an 10 employee showed up and/or was available to work.</p> <p>11 Those supervisors were also aware of when 12 employees came back, what they were dispatched to do 13 during the day, and fully aware of some of the DOT 14 guidelines in regards to safety standards and when we 15 reset hours for these employees that may be driving 16 commercial vehicles at 16 hours.</p> <p>17 So we had processes in place for those 18 supervisors to be able to both capture and communicate 19 any hours worked in excess of 16 so that, one, we could 20 make sure that the employees got enough rest to safely 21 recess and, two, so that we captured and reported those 22 hours in excess of 16 to payroll such that the employees 23 could be compensated for any hours in excess of 16 that 24 they worked.</p> <p>25 MR. MOULTON: All right. I'm going to</p>
<p style="text-align: right;">Page 175</p> <p>1 regards to some of the processing approval. It's 2 possible that an -- that a foreman could have been 3 involved in that. I think it's -- it's unlikely, 4 probably didn't occur with regularity; but it's 5 certainly possible.</p> <p>6 Q What about a general foreman?</p> <p>7 A A general foreman, again, would have had some 8 connection to approval process and recommendation in 9 regards to the processing of the payrolls inside of this 10 time period. He may or may not see an electronic stamp 11 or approval because to put this in context, during a 12 large part of this time period, Puerto Rico had no 13 power. So for a lot of the supervisors in Puerto Rico, 14 there was no ability to connect electronically to be 15 able to approve some of these items because the entire 16 island was functionally without power. Their only 17 communication while they were in many of the areas in 18 Puerto Rico was via sat phone.</p> <p>19 Q Okay. So who -- in -- you -- you reminded me 20 of another topic of -- of the operational difficulties 21 in Puerto Rico during this time. How was the workers' 22 time tracked, if it was? You under -- you understand? 23 Was there -- was there a, like, actual 24 "you worked this many hours per day exactly" kind of 25 tracking, like, punch clock system in Puerto Rico?</p>	<p style="text-align: right;">Page 177</p> <p>1 object to almost all of that as nonresponsive.</p> <p>2 Q (By Mr. Moulton) So the -- there's a 3 supervisor -- there's somebody that's on site at the 4 safety meeting that takes roll. Who typically would -- 5 what position would usually be taking roll?</p> <p>6 A The foreman or general foreman would have 7 knowledge as to whether or not their crews reported.</p> <p>8 Q Okay. So they're -- they're taking roll. How 9 are they -- how are they recording, if they are, of 10 who's physically there that day?</p> <p>11 A As I mentioned, the foreman and general 12 foreman are responsible for their crews. They're aware 13 of who reports to work. That's reported to the payroll 14 department, being, in many cases, JD Kinsey, who was 15 responsible for inputting their hours. The hours either 16 worked or on call were 16 hours per day, and the foreman 17 and general foreman had processes in place to monitor in 18 the event that any employees exceeded 16 hours.</p> <p>19 Q What documents would these supervisors use to 20 document who was there each day?</p> <p>21 A In regards to --</p> <p>22 Q For the attendance.</p> <p>23 A -- physical documents?</p> <p>24 Q Yes.</p> <p>25 A From time to time, there were sign-in sheets</p>

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<p style="text-align: right;">Page 178</p> <p>1 at the safety meetings. Sometimes that was the case.</p> <p>2 Sometimes that was not the case on the sign-in sheets.</p> <p>3 Again, you're operating in an environment in which,</p> <p>4 functionally, a hundred percent of the island didn't</p> <p>5 have electricity. So in regards to electronic capturing</p> <p>6 or punch in/punch out that was physically impossible.</p> <p>7 Q Okay. But there is definitely a -- everyday</p> <p>8 there is a supervisor who is making sure -- he's</p> <p>9 responsible for his crew to make sure that the -- the</p> <p>10 folks who are showing up that day are going to get paid?</p> <p>11 A The supervisors are responsible for their</p> <p>12 crews --</p> <p>13 Q Uh-huh.</p> <p>14 A -- and for reporting to the payroll department</p> <p>15 as to who is present and who is not.</p> <p>16 Q Okay.</p> <p>17 A Regards to how they get paid, that's a</p> <p>18 mechanical function for which the supervisors are not</p> <p>19 involved in those calculations. In regards to showing</p> <p>20 up or not showing up, they are responsible for -- for</p> <p>21 taking that roll and for capturing and reporting any</p> <p>22 hours in excess of 16 or for recommending any</p> <p>23 discretionary bonus from time to time.</p> <p>24 Q So you would agree with me that at least at --</p> <p>25 at least for some of the time there were times where the</p>	<p style="text-align: right;">Page 180</p> <p>1 Q All right. We've -- we've heard testimony of</p> <p>2 one of the guys who actually did that before -- you</p> <p>3 know, actually taken the roll. And what he would say is</p> <p>4 that he would take the attendance on his iPad at the</p> <p>5 meeting and later at the hotel, he would just print it</p> <p>6 and hand it to -- to his -- the guy he reported to.</p> <p>7 Would you -- is -- is that a way that</p> <p>8 it -- that you understood that it could been -- it could</p> <p>9 have been done?</p> <p>10 A It's certainly a possible way for some of the</p> <p>11 supervisors, yes. Would it have been possible for all</p> <p>12 of them? Likely not.</p> <p>13 Q But safe to say it wasn't the practice for</p> <p>14 the -- for Higher Power to -- recording exact times of</p> <p>15 start, stop work each day?</p> <p>16 A The time at which the employees started was</p> <p>17 captured. There were procedures in place to monitor the</p> <p>18 hours worked as well as report any hours in excess of</p> <p>19 16.</p> <p>20 Q Okay. That's -- and that's not my question.</p> <p>21 There -- the company wasn't tracking</p> <p>22 exact hours actually worked; is that right?</p> <p>23 A Which company are you referring to?</p> <p>24 Q Higher Power.</p> <p>25 A Higher Power did track 16 hours for the</p>
<p style="text-align: right;">Page 179</p> <p>1 attendance each morning was written down on paper?</p> <p>2 A That occurred sometimes, yes --</p> <p>3 Q Okay.</p> <p>4 A -- in regards to sign-in sheets for safety</p> <p>5 meetings.</p> <p>6 Q And it could also have occurred on a -- like,</p> <p>7 a iPad?</p> <p>8 A It's possible; however, to the extent there</p> <p>9 was no cell phone service or electricity, it was really</p> <p>10 tough in regards to -- to data capture.</p> <p>11 Q Right. But regardless of whether or not</p> <p>12 there's electricity or cell phone service, you could</p> <p>13 still record it on an iPad and then when you got back to</p> <p>14 a hotel or somewhere that had service, it could be</p> <p>15 turned in, correct?</p> <p>16 A For a large percentage of this time frame,</p> <p>17 there was no cellular service on the island. So you had</p> <p>18 to use sat phones to communicate data.</p> <p>19 Q Okay.</p> <p>20 A There were isolated pockets where there were</p> <p>21 places that had generators and may have had some</p> <p>22 communication ability; but in large part, particularly</p> <p>23 in this January time frame that you've got on this</p> <p>24 email, the island was functionally without power or</p> <p>25 without cell phone communication.</p>	<p style="text-align: right;">Page 181</p> <p>1 employees that showed up and were on call for each day</p> <p>2 that they showed up and worked and/or were on call. So</p> <p>3 those hours were tracked inside of the records.</p> <p>4 Q Okay. And that -- so that's what we see over</p> <p>5 and over is this 16.00. That's what you're talking</p> <p>6 about, right?</p> <p>7 A You see 16 a lot of times. That was the shift</p> <p>8 for which employees were required to work and/or be</p> <p>9 available to work.</p> <p>10 Q Okay. So -- so there wasn't -- there wasn't a</p> <p>11 system in Higher Power to even, like, record on paper,</p> <p>12 like, "Hey, today we're starting at 6:05 and then we're</p> <p>13 ending at 5:53." That -- that wasn't happening?</p> <p>14 A The safety meeting sheets in some instances</p> <p>15 may have recorded the time of that safety meeting and</p> <p>16 that kickoff time or -- or meeting point at -- at the</p> <p>17 prescribed location. In regards to end time, the</p> <p>18 supervisors in this matter had the capability and</p> <p>19 knowledge to -- to track any hours in excess of 16.</p> <p>20 Q So let me ask you this: If there were -- at</p> <p>21 least at some point -- at sometimes at least, paper, or</p> <p>22 electronic documents that showed at least the start</p> <p>23 times for these workers, how come we don't have them?</p> <p>24 A In regards to sign-in sheets?</p> <p>25 Q Sign-in sheets or anything they would have</p>

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<p style="text-align: right;">Page 182</p> <p>1 used to record a start time.</p> <p>2       <b>A</b>    <b>I don't believe that there is a sign-in sheet</b></p> <p>3 <b>record retention policy in place that would require us</b></p> <p>4 <b>to keep those.</b></p> <p>5       <b>Q</b>    <b>Okay. So you're saying that -- that there may</b></p> <p>6 <b>have been records that would show -- like, a sign-in</b></p> <p>7 <b>sheet that would show when they started work that day,</b></p> <p>8 <b>but those records were not kept?</b></p> <p>9       <b>A</b>    <b>That's -- I said I'm not aware of a record</b></p> <p>10 <b>retention policy relative to the sign-in sheets in -- in</b></p> <p>11 <b>regards to -- to the production of those items.</b></p> <p>12       <b>Q</b>    <b>All right. And I'm not even asking you about</b></p> <p>13 <b>your record retention policy. I don't even know why</b></p> <p>14 <b>you're talking about it. What I'm talking about is --</b></p> <p>15 <b>what I'm asking you about is: Those documents existed</b></p> <p>16 <b>at some point. Why don't we have them?</b></p> <p>17       <b>A</b>    <b>And I referenced the record retention policy</b></p> <p>18 <b>not --</b></p> <p>19               MR. STUKENBERG: Yeah.</p> <p>20       <b>A</b>    <b>-- requiring us to maintain those. So --</b></p> <p>21               MR. STUKENBERG: And, Dave, if you want</p> <p>22 <b>to talk about what documents have been produced or not</b></p> <p>23 <b>produced, you can talk to me about it.</b></p> <p>24               MR. MOULTON: No. I want to know -- it's</p> <p>25 <b>not about that. I want to know -- it's not about that.</b></p>	<p style="text-align: right;">Page 184</p> <p>1 have them? How come Mammoth or Higher Power, how come</p> <p>2 they don't have these sign-in sheets?</p> <p>3       <b>A</b>    <b>Mammoth Energy Services, Inc., doesn't have</b></p> <p>4 <b>anything to do with anything that happened in Puerto</b></p> <p>5 <b>Rico. So that's why they don't have the sign-in sheets.</b></p> <p>6       <b>Q</b>    <b>How come Higher Power doesn't have it?</b></p> <p>7       <b>A</b>    <b>There's no record retention policy as it</b></p> <p>8 <b>relates to the sign-in sheets, but the detailed pay</b></p> <p>9 <b>records captured the hours for each one of the</b></p> <p>10 <b>employees.</b></p> <p>11       <b>Q</b>    <b>Okay. So the best available information that</b></p> <p>12 <b>we have about hours worked is going to be what's in the</b></p> <p>13 <b>Time Detail Reports?</b></p> <p>14       <b>A</b>    <b>You have time detailed reports as one</b></p> <p>15 <b>indicator of hours worked for each of the employees,</b></p> <p>16 <b>yes.</b></p> <p>17       <b>Q</b>    <b>All right. Back to exhibit -- oh, hold on.</b></p> <p>18 <b>That was just one. What's the -- what -- what others</b></p> <p>19 <b>are there? What other documents show the hours they</b></p> <p>20 <b>worked?</b></p> <p>21       <b>A</b>    <b>I said that the detailed pay records capture</b></p> <p>22 <b>hours worked. There may or may not be Excel files that</b></p> <p>23 <b>capture hours worked.</b></p> <p>24       <b>Q</b>    <b>Okay. So you're aware of Excel files that</b></p> <p>25 <b>show exact hours worked for these guys; or is it just,</b></p>
<p style="text-align: right;">Page 183</p> <p>1       <b>Q</b>    <b>(By Mr. Moulton) Okay. So you're saying that</b></p> <p>2 <b>you didn't have to keep the -- the records that would</b></p> <p>3 <b>show the time they started each day because it wasn't</b></p> <p>4 <b>part of your record retention policy? Is that what</b></p> <p>5 <b>you're saying?</b></p> <p>6       <b>A</b>    <b>I don't believe that was my testimony.</b></p> <p>7       <b>Q</b>    <b>Okay. So I don't know why, when I ask you how</b></p> <p>8 <b>come we don't have these documents, you say it's not</b></p> <p>9 <b>part of our record retention policy. So what? Why does</b></p> <p>10 <b>that matter?</b></p> <p>11       <b>A</b>    <b>You asked why they weren't produced. I said</b></p> <p>12 <b>I'm not aware of a record retention policy as it relates</b></p> <p>13 <b>to sign-in sheets.</b></p> <p>14       <b>Q</b>    <b>Okay. So what happened to the time-in</b></p> <p>15 <b>sheets -- the sign-in sheets?</b></p> <p>16       <b>A</b>    <b>Again, we don't have a record retention</b></p> <p>17 <b>policy. So I have no knowledge of -- of what happened</b></p> <p>18 <b>to these particular sign-in sheets.</b></p> <p>19       <b>Q</b>    <b>Okay. So you don't know?</b></p> <p>20       <b>A</b>    <b>I don't know why they weren't produced. I</b></p> <p>21 <b>don't -- I know that we don't have a record --</b></p> <p>22       <b>Q</b>    <b>I'm not --</b></p> <p>23       <b>A</b>    <b>-- retention policy.</b></p> <p>24       <b>Q</b>    <b>I'm not talking about production, okay, right</b></p> <p>25 <b>now. I'm talking about how come -- how come you don't</b></p>	<p style="text-align: right;">Page 185</p> <p>1 like, the 16s that we've been talking about?</p> <p>2       <b>A</b>    <b>I said there may or may not be.</b></p> <p>3       <b>Q</b>    <b>Okay.</b></p> <p>4       <b>A</b>    <b>I've not --</b></p> <p>5       <b>Q</b>    <b>You don't know?</b></p> <p>6       <b>A</b>    <b>-- put my eyes on payroll input records as it</b></p> <p>7 <b>relates to employees. I have seen the -- the detailed</b></p> <p>8 <b>hours in -- in many of the employee files in regards to</b></p> <p>9 <b>hours worked.</b></p> <p>10       <b>Q</b>    <b>Okay. And so those are the same records that</b></p> <p>11 <b>you've produced?</b></p> <p>12       <b>A</b>    <b>Yes, sir.</b></p> <p>13       <b>Q</b>    <b>Okay. Back to 172 now, you see how it has</b></p> <p>14 <b>a -- an attachment, "HPE Payroll Corrections - PR.xlsx."</b></p> <p>15               Do you see that?</p> <p>16       <b>A</b>    <b>I see that.</b></p> <p>17       <b>Q</b>    <b>Okay. And we talked about it earlier. This</b></p> <p>18 <b>email is about doing the discretionary add-ons to the --</b></p> <p>19 <b>to the pay that we were talking about earlier, correct?</b></p> <p>20       <b>A</b>    <b>It appears to contain that subject, yes.</b></p> <p>21       <b>Q</b>    <b>Okay. Any -- any -- do you happen to know why</b></p> <p>22 <b>they call it a correction rather than bonus sheet, for</b></p> <p>23 <b>example?</b></p> <p>24       <b>A</b>    <b>These are, in large part, administrative</b></p> <p>25 <b>clerks. So why they choose their terminology, I don't</b></p>

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<p style="text-align: right;">Page 186</p> <p>1 know. I know that it has no legal context, if that's</p> <p>2 what you're asking.</p> <p>3 Q Okay. So you -- the answer to my question is</p> <p>4 you don't know why they said that?</p> <p>5 MR. STUKENBERG: Objection. He just gave</p> <p>6 you his answer.</p> <p>7 Q (By Mr. Moulton) You don't know?</p> <p>8 A I'll reincorporate my previous answer.</p> <p>9 Q Okay.</p> <p>10 A I answered your question.</p> <p>11 Q Yeah, it's just you don't know?</p> <p>12 A That's not what I said.</p> <p>13 Q Okay. That's what I heard.</p> <p>14 MR. STUKENBERG: That's fine. You asked</p> <p>15 him to answer. Let's move on.</p> <p>16 (Plaintiffs' Exhibit 173 marked.)</p> <p>17 Q (By Mr. Moulton) All right. So let's look at</p> <p>18 this spreadsheet. This is going to be another Excel</p> <p>19 spreadsheet that is going to be Plaintiff's Exhibit 173</p> <p>20 and it's not going to have a sticker on it, but we're</p> <p>21 going to designate it that. It's -- it's Mammoth --</p> <p>22 Bates No. Mammoth 3149, and it's a native Excel file</p> <p>23 that we're going to be looking at here.</p> <p>24 So we've got some tabs in this</p> <p>25 spreadsheet, Mr. Layton. Do you see this on your</p>	<p style="text-align: right;">Page 188</p> <p>1 one that involves adding in the additional pay on the</p> <p>2 pay stub under day rate?</p> <p>3 A This one -- the highlighted in yellow appears</p> <p>4 to be plugging in a day rate pay code and amount.</p> <p>5 Q Okay. It looks like for 16 hours, correct?</p> <p>6 A That's correct.</p> <p>7 Q And it looks like that there's going to be an</p> <p>8 addition of \$1600?</p> <p>9 A Appears to be \$1600 in there. I'm not sure</p> <p>10 what the -- what impact, if any, the -- the 200-dollar</p> <p>11 federal withholding may or may not have on the overall</p> <p>12 adjustment.</p> <p>13 Q Okay. And so -- and we can take this at face</p> <p>14 value, right, for the description of the issue? The</p> <p>15 employee is missing two days of standby, missing two</p> <p>16 days in PR, employee taxes incorrect.</p> <p>17 Do you disagree with that?</p> <p>18 A It says what it says.</p> <p>19 Q Okay. And this is an example of a payroll</p> <p>20 correction?</p> <p>21 A This is an example of a payroll item that's</p> <p>22 identified in the -- in the processing of payroll.</p> <p>23 Q All right. One -- specifically one of the</p> <p>24 ones referenced in the email that's about adding in</p> <p>25 these discretionary amounts to the pay?</p>
<p style="text-align: right;">Page 187</p> <p>1 screen?</p> <p>2 A Yes, sir.</p> <p>3 Q Okay. So it looks like we have "Corrections</p> <p>4 for January 22nd, 2018," on this first tab?</p> <p>5 A Yes, sir.</p> <p>6 Q And we have some names of folks and the</p> <p>7 company they're with. They're with HP, which is Higher</p> <p>8 Power, correct?</p> <p>9 A That's correct.</p> <p>10 Q Okay. And we have a "description of the</p> <p>11 issue" here?</p> <p>12 A Yes, sir.</p> <p>13 Q Are those the reasons for the payroll</p> <p>14 corrections?</p> <p>15 A This appears to be a list of various rate</p> <p>16 changes. I don't know what the connotation of</p> <p>17 "corrections" is or isn't.</p> <p>18 Q Okay. Is this about making those additional</p> <p>19 payments under day rate on the pay stubs?</p> <p>20 A This appears to be hourly rate changes in</p> <p>21 large part. There's one employee at the bottom that</p> <p>22 appears to be adding benefits. So it appears to be a</p> <p>23 little bit of a mixed bag in regards to changes.</p> <p>24 Q Okay. Let's go on to the next tab. Is -- on</p> <p>25 this January 12th, '18, corrections needed tab, is this</p>	<p style="text-align: right;">Page 189</p> <p>1 A No, I don't believe this references a</p> <p>2 discretionary amount of pay. This appears to be for two</p> <p>3 days of work. I don't see a discretionary amount of pay</p> <p>4 described in the email.</p> <p>5 Q Okay. Let's try January 15th, 2018. That's</p> <p>6 the next tab. We have some workers here; company, HP;</p> <p>7 hours type. We got hours number.</p> <p>8 Do you know what's going on with this?</p> <p>9 A No. Those hours don't -- don't make a whole</p> <p>10 lot of sense to me.</p> <p>11 Q Right. It's -- it's -- it sure looks like to</p> <p>12 me that that's probably meant to be a 448 additional</p> <p>13 pay. Can you verify either way?</p> <p>14 A I don't believe that's meant to be --</p> <p>15 Q Well, what else could be it be?</p> <p>16 A Well, it's under an hours column. So --</p> <p>17 Q Right.</p> <p>18 A -- if it's an hourly input, then that would --</p> <p>19 to the extent it results in a pay calculation, it would</p> <p>20 be an hourly input times an hourly rate. So I don't</p> <p>21 draw the conclusion that -- that you make.</p> <p>22 Q Okay. So you don't -- so looking at these,</p> <p>23 you don't -- you don't know what -- what's going on with</p> <p>24 this spreadsheet on January 15th, '18; is that correct?</p> <p>25 A Well, 448, you know, would presumably be a</p>

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<p style="text-align: right;">Page 190</p> <p>1 month's worth of hours if you backward calculate that, I 2 think. In regards to how that drives -- 3 Q Right. 4 A -- you know, a calculation, I don't know; but 5 any hourly calculation is based on an hourly rate. In 6 other words, you can't hard code a payroll amount into 7 a -- an hours number. It requires an hourly rate. 8 Q Okay. So can you point to me -- even after 9 you've had a break now, can you point to me any examples 10 of documents, specific documents, that would deal with 11 a -- a day rate adjustment? 12 MR. STUKENBERG: Objection, form. Didn't 13 you guys just go over one? 14 MR. MOULTON: I mean -- I mean, the -- 15 what -- what he calls the discretionary ones. 16 Q (By Mr. Moulton) You know, your -- the ones 17 that you called the discretionary adjustments to the 18 pay. We just looked at a ton of examples of them before 19 the break. I want to know if even after the break -- 20 presumably, you've had a chance to talk to your 21 lawyers -- if you -- without telling me what y'all 22 talked about, are you able to identify any paper 23 examples of -- that are associated with that approval 24 process? 25 MR. STUKENBERG: So I'm going to go ahead</p>	<p style="text-align: right;">Page 192</p> <p>1 saying, you go, "Dave, figure it out yourself." And I 2 am. I -- I hear you on that, but I want to know if you 3 know of any one particularly right now, any particular 4 document that you can point me to? 5 MR. STUKENBERG: Does any of the 6 documents from what have been produced come to mind in 7 particular? 8 MR. MOULTON: Thank you, Will. 9 A I don't recall any Bates numbered documents 10 with specific Bates numbers that answer your question. 11 Q (By Mr. Moulton) Okay. And that's not what 12 I'm asking. I'm wondering if you can even describe one. 13 A I believe my previous testimony has described 14 some of those calculations in Excel and then I further 15 described what the mechanical payroll approval process 16 may look like and I'll reincorporate all of that 17 testimony. 18 Q I want to talk a little bit more about the 19 treasury shared resource that we were talking about 20 earlier. Do you recall testimony about that? 21 A Yes, I do. 22 Q Okay. One aspect of that I didn't cover was 23 if -- if one of the subsidiaries is having a loss, like, 24 they're just -- something's happened and they're kind of 25 in the red, how would the treasury service step in or</p>
<p style="text-align: right;">Page 191</p> <p>1 and object to all the characterizations as though we 2 coached the witness during a break and -- 3 MR. MOULTON: Oh, I don't mean that. 4 MR. STUKENBERG: -- the other thing I'll 5 tell you, Dave, is that we didn't go look for any 6 documents either. To the extent you want -- to answer 7 your question, whatever documents exist, you have. 8 MR. MOULTON: Right. 9 MR. STUKENBERG: They've been produced. 10 MR. MOULTON: And I -- I hear you, and 11 I'm not mean to mean -- I don't mean to be asking about 12 coaching the witnesses. 13 Q (By Mr. Moulton) Sometimes your memory can get 14 refreshed after a break, and I'm asking you: Sitting 15 here now, are you aware of any documents or any specific 16 examples that you can point me to that would show 17 documents that are associated with the approval process 18 for the discretionary amounts that are added on to the 19 plaintiff's pay? 20 MR. STUKENBERG: Same objection. 21 A You've got all the documents that have been 22 produced. So if you want to comb through those 23 documents, you've got them. 24 Q (By Mr. Moulton) And -- and that's not my 25 question. I mean, you can say, "Dave" -- what you're</p>	<p style="text-align: right;">Page 193</p> <p>1 work in those sort of situations? 2 A I don't necessarily understand what a loss has 3 to do with anything or doesn't have to do with a 4 treasury service. 5 Q Okay. Why not? 6 A Treasury service has to do with requesting 7 funds and the shared service either pushing those funds 8 down or not pushing those funds down. So a loss doesn't 9 have anything to do with those mechanics or the 10 recording of those transactions. 11 Q Okay. So if -- if Higher Power, for example, 12 was ever in a situation where it was either sort of a 13 negative balance or was going to have a transaction that 14 would cause it to go to a negative balance, is that a 15 situation where money could be swept to Higher Power to 16 either prevent the negative amount or to bring it back? 17 A I don't know what a negative amount is. So 18 you're going to have to describe that. Higher Power can 19 request an influx of cash, and that can either be 20 allocated or not allocated. In the context of a 21 negative balance, that has no financial meaning. 22 Q Okay. So I'm -- I'm trying to -- I'm having a 23 hard time wrapping my head around that. If an account 24 balance, like a bank account balance, is below zero, I 25 would consider that to be a negative balance.</p>

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<p style="text-align: right;">Page 194</p> <p>1 Does that make sense to you?</p> <p>2 <b>A I would -- that would -- you're asking if</b></p> <p>3 <b>Higher Power --</b></p> <p>4 <b>Q No, no --</b></p> <p>5 <b>A -- or --</b></p> <p>6 <b>Q No, no, no. We seem to be having a</b></p> <p>7 <b>communication problem. So I'm trying to get back on</b></p> <p>8 <b>track with us, me and you, okay? You said you don't</b></p> <p>9 <b>understand what a negative balance means, like, you said</b></p> <p>10 <b>it doesn't even exist. And so I'm like -- that doesn't</b></p> <p>11 <b>make sense to me. So I'm trying to see if there -- we</b></p> <p>12 <b>can come up with a scenario that makes sense to both of</b></p> <p>13 <b>us.</b></p> <p>14 <b>Negative bank account balance is that a</b></p> <p>15 <b>negative balance, or no?</b></p> <p>16 <b>A I would characterize that as an overdraft or</b></p> <p>17 <b>overdrawn balance.</b></p> <p>18 <b>Q Okay. All right. Overdraft or overdrawn.</b></p> <p>19 <b>You could also have a situation where</b></p> <p>20 <b>you're just looking at things that are owed and things</b></p> <p>21 <b>coming in and that could actually end up being less than</b></p> <p>22 <b>zero. That would also be a -- a negative situation,</b></p> <p>23 <b>correct?</b></p> <p>24 <b>MR. STUKENBERG: Objection --</b></p> <p>25 <b>A That would --</b></p>	<p style="text-align: right;">Page 196</p> <p>1 So, now, in a working capital situation,</p> <p>2 where the working -- we've -- the -- we talked about a</p> <p>3 working capital situation where it could be negative.</p> <p>4 Is that something where the treasury services could step</p> <p>5 in and prevent or cure?</p> <p>6 <b>A There's not a prevention or a, quote, unquote,</b></p> <p>7 <b>cure.</b></p> <p>8 <b>Q Okay.</b></p> <p>9 <b>A The treasury management function is that the</b></p> <p>10 <b>subsidiaries can either receive or push funds to Mammoth</b></p> <p>11 <b>Energy Partners and the individuals at Mammoth Energy,</b></p> <p>12 <b>Inc., aid in that approval and processing. All of those</b></p> <p>13 <b>transactions are recorded on both sides as far as cash</b></p> <p>14 <b>going up and down, and those decisions are made</b></p> <p>15 <b>generally on a -- a daily basis.</b></p> <p>16 <b>Q Mammoth Energy Partners can sweep the money in</b></p> <p>17 <b>though, right?</b></p> <p>18 <b>A That's not a -- Mammoth Energy, Inc., and its</b></p> <p>19 <b>shared services --</b></p> <p>20 <b>Q I said "partners," but, yeah.</b></p> <p>21 <b>A -- can either push money up from the</b></p> <p>22 <b>subsidiary to Mammoth Energy Partners or push money down</b></p> <p>23 <b>from Mammoth Energy Partners.</b></p> <p>24 <b>Q Okay. Now, so what happens with Higher Power</b></p> <p>25 <b>when -- let's say Higher Power has paid everything that</b></p>
<p style="text-align: right;">Page 195</p> <p>1 <b>MR. STUKENBERG: -- form.</b></p> <p>2 <b>A -- not result in a negative bank balance.</b></p> <p>3 <b>You're --</b></p> <p>4 <b>Q (By Mr. Moulton) Okay.</b></p> <p>5 <b>A You're conflating a working capital issue --</b></p> <p>6 <b>Q Uh-huh.</b></p> <p>7 <b>A -- with a cash or bank balance issue, and</b></p> <p>8 <b>that's holistically inappropriate.</b></p> <p>9 <b>Q All right. And -- and I'm not actually</b></p> <p>10 <b>conflating them. I'm just talking about two different</b></p> <p>11 <b>things, but that's fine. So we have the -- we have the</b></p> <p>12 <b>negative bank balance scenario. If that were to happen,</b></p> <p>13 <b>treasury services could make sure that Higher Power, for</b></p> <p>14 <b>example, gets back into positive, correct?</b></p> <p>15 <b>A In this made up example, yes.</b></p> <p>16 <b>Q Okay.</b></p> <p>17 <b>A If --</b></p> <p>18 <b>Q Now, if --</b></p> <p>19 <b>A Can I finish?</b></p> <p>20 <b>Q Well, I mean, the answer is "yes." So if -- I</b></p> <p>21 <b>mean, we can be here all day; but, I mean, if the answer</b></p> <p>22 <b>is "yes," that's all I care about.</b></p> <p>23 <b>A Do you want to sit here and offer testimony,</b></p> <p>24 <b>or do I get to answer any of these questions?</b></p> <p>25 <b>Q You answered it. You answered "yes."</b></p>	<p style="text-align: right;">Page 197</p> <p>1 it owes and has bought everything it wants and it's</p> <p>2 sitting with excess money in its account. How is that</p> <p>3 treated or what -- what happens with that money?</p> <p>4 <b>A There's nothing magical that happens with that</b></p> <p>5 <b>money. There are treasury decisions made on a daily</b></p> <p>6 <b>basis to push money up or down from a subsidiary to</b></p> <p>7 <b>Mammoth Energy Partners.</b></p> <p>8 <b>Q Is there any -- go ahead.</b></p> <p>9 <b>A We've already talked about, and I've already</b></p> <p>10 <b>testified to, the -- the shared services treasury</b></p> <p>11 <b>function to both invest cash and to minimize borrowing</b></p> <p>12 <b>costs.</b></p> <p>13 <b>Q All right. So -- so with the profits, if you</b></p> <p>14 <b>will, from Higher Power, that can be pushed up to</b></p> <p>15 <b>Mammoth Energy, Inc.?</b></p> <p>16 <b>A We didn't talk about profits. We talked about</b></p> <p>17 <b>cash in a treasury function. So --</b></p> <p>18 <b>Q And I'm asking you a new --</b></p> <p>19 <b>A -- again --</b></p> <p>20 <b>Q -- question now. Let's move on, okay? I'm</b></p> <p>21 <b>asking you a new question. The new question, answer</b></p> <p>22 <b>that.</b></p> <p>23 <b>A So cash --</b></p> <p>24 <b>Q No.</b></p> <p>25 <b>A -- can be --</b></p>

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<p>1 Q No. I want to know specifically about</p> <p>2 profits.</p> <p>3 A Profits is different.</p> <p>4 Q Okay. How are -- how are Higher Power's</p> <p>5 profits dealt with at the Mammoth Energy level?</p> <p>6 A Mammoth Energy what?</p> <p>7 Q Mammoth Energy, Inc. Let's start with that</p> <p>8 one.</p> <p>9 A Mammoth Energy, Inc., does not hold any equity</p> <p>10 interest in any entity. So Mammoth Energy, Inc., does</p> <p>11 not record the profit or loss of any legal entity.</p> <p>12 Q And I'm talking about the -- the sweeping</p> <p>13 process, okay? So if Higher Power has profit in its</p> <p>14 account, how is that pushed up or down? What -- what</p> <p>15 happens? How does that work?</p> <p>16 A There is no bank balance that has profit.</p> <p>17 Bank balance has cash.</p> <p>18 Q Okay.</p> <p>19 A Profit is something different. So maybe we'll</p> <p>20 have a little accounting exercise where we talk about</p> <p>21 cash and what profit is.</p> <p>22 Q That's okay. We'll --</p> <p>23 A Cash is --</p> <p>24 Q We'll go with cash. Talk about cash. And</p> <p>25 we -- have you already covered cash?</p>	<p>1 Q Okay, sir. I did not say you said that; and</p> <p>2 I'm not insinuating you did, okay? So this is</p> <p>3 ridiculous from you, okay?</p> <p>4 A If you ask me a bad question, you're</p> <p>5 probably --</p> <p>6 Q No, it's not a --</p> <p>7 A -- going to get a bad answer.</p> <p>8 Q -- bad question.</p> <p>9 A And if you don't like that, then stop asking</p> <p>10 bad --</p> <p>11 Q No.</p> <p>12 A -- questions.</p> <p>13 Q Okay. So are you saying that no money from</p> <p>14 Mammoth Energy, Inc., goes to Mammoth Energy Services,</p> <p>15 Inc.?</p> <p>16 A Mammoth Energy, Inc., is not sweeping cash up</p> <p>17 or down to Mammoth Energy Services, Inc. We've talked</p> <p>18 about it ad nauseam that the subsidiaries push cash up</p> <p>19 and down to Mammoth Energy Partners. Not one time have</p> <p>20 we said Mammoth Energy Services, Inc.</p> <p>21 Q And I realize that, but I'm asking a different</p> <p>22 thing now. And I know you want to keep talking about</p> <p>23 what you --</p> <p>24 MR. STUKENBERG: So what's --</p> <p>25 Q (By Mr. Moulton) -- already talked about --</p>
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<p>1 A We've covered cash.</p> <p>2 Q Okay. All right. And cash would -- could</p> <p>3 include profits?</p> <p>4 A Cash is cash. Profits is a PNL term that's</p> <p>5 treated differently.</p> <p>6 Q Okay. That's just, like, on other documents;</p> <p>7 but the actual -- the actual money in a bank account can</p> <p>8 be all sorts of things. It can be profit. It can</p> <p>9 just -- it can be operating capital. It can be any</p> <p>10 number of things, is what you're saying, I think?</p> <p>11 A Cash is cash, and you're trying to butcher</p> <p>12 accounting. So if you want to talk about cash and</p> <p>13 treasury, we can talk about that. If you're going to</p> <p>14 butcher accounting, then we're going to be here for a</p> <p>15 while because you're completely butchering it.</p> <p>16 Q Okay. So if -- if money is swept up to</p> <p>17 Mammoth Energy, Inc., how does money get to Mammoth</p> <p>18 Energy Services, Inc.?</p> <p>19 A I've never testified at any point in this</p> <p>20 arduous process about cash going to Mammoth Energy,</p> <p>21 Inc., not one time.</p> <p>22 Q And I --</p> <p>23 A If you need to take a minute and go reread it</p> <p>24 so you understand what I've testified to, then maybe you</p> <p>25 should do that.</p>	<p>1 MR. STUKENBERG: What's the new question?</p> <p>2 A What's the new wrinkle?</p> <p>3 Q (By Mr. Moulton) The new question is: How</p> <p>4 does money get from the subsidiary, for example, Mammoth</p> <p>5 Energy, Inc., to Mammoth Energy Services, Inc.?</p> <p>6 MR. STUKENBERG: I believe he just</p> <p>7 testified that Mammoth Energy, Inc., does not have</p> <p>8 money.</p> <p>9 A Mammoth Energy, Inc., just like all the other</p> <p>10 subsidiaries --</p> <p>11 Q (By Mr. Moulton) Uh-huh.</p> <p>12 A -- pushes money up and down to Mammoth Energy</p> <p>13 Partners.</p> <p>14 Q Okay. So -- so I've also asked this other</p> <p>15 question; but let me ask it again, okay? How does</p> <p>16 Mammoth Energy Services, Inc., get money from</p> <p>17 subsidiaries?</p> <p>18 A You're -- you're trying to skip this legal</p> <p>19 structure. Mammoth Energy Services, Inc., owns Mammoth</p> <p>20 Energy Partners, LLC.</p> <p>21 Q Yes.</p> <p>22 A So all of the subsidiaries are owned either</p> <p>23 directly or indirectly by Mammoth Energy Partners, LLC.</p> <p>24 Q Okay. So Mammoth Energy Services, Inc., is</p> <p>25 under the umbrella of Mammoth Energy Partners?</p>

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<p>1 A That's not what I just said. Let me speak</p> <p>2 real slowly for you.</p> <p>3 Q Well, no. Let me --</p> <p>4 A Mammoth --</p> <p>5 Q Let me try --</p> <p>6 A -- Energy Services, Inc., is the ultimate</p> <p>7 parent.</p> <p>8 Q Yes.</p> <p>9 A It owns Mammoth Energy Partners --</p> <p>10 Q Uh-huh.</p> <p>11 A -- LLC.</p> <p>12 Q So --</p> <p>13 A Mammoth Energy Partners, LLC, either directly</p> <p>14 or indirectly owns all of the subsidiaries.</p> <p>15 Q And I understand that. So does Mammoth Energy</p> <p>16 Services, Inc., have revenues?</p> <p>17 A Mammoth Energy Services, Inc., does not</p> <p>18 perform any services. It does not record any revenues.</p> <p>19 It is a publically traded entity that has a publically</p> <p>20 traded currency. It has a loan agreement, and it owns</p> <p>21 the membership interest of Mammoth Energy Partners, LLC.</p> <p>22 It has no revenues. It has no customers. It only has</p> <p>23 ownership interest in the direct or indirect</p> <p>24 subsidiaries.</p> <p>25 Q So it's a publically traded company. So it</p>	<p>1 A Inc., yes.</p> <p>2 Q Yes. Mammoth Energy, Inc., there -- you</p> <p>3 mentioned that there's a HR department that's a shared</p> <p>4 service for companies that would include Higher Power,</p> <p>5 Cobra, for example, right?</p> <p>6 A I believe I mentioned Higher Power, 5 Star,</p> <p>7 Cobra Energy, among other Cobra entities.</p> <p>8 Q Yes. And the point of my question wasn't to</p> <p>9 give an exhaustive list; but the point is that there is</p> <p>10 a group at Mammoth Energy, Inc., that provides shared</p> <p>11 human resources for other entities underneath the -- in</p> <p>12 this Mammoth umbrella, correct?</p> <p>13 A That's correct.</p> <p>14 Q Okay. Now, as part of that shared resource in</p> <p>15 Mammoth Energy, Inc., those HR representatives have</p> <p>16 access to -- do they have access to the -- to, like, the</p> <p>17 employee files and employment records of the employees</p> <p>18 of the subsidiaries?</p> <p>19 A It would depend on job function and role.</p> <p>20 They may have access, depending on job function and</p> <p>21 role, to none, some, or all of the legal entities for</p> <p>22 which Mammoth Energy, Inc., provides shared services.</p> <p>23 Q Did Mammoth Energy, Inc., have access to the</p> <p>24 payroll records and employment records of the plaintiffs</p> <p>25 in this matter that worked for Higher Power?</p>
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<p>1 has shareholders?</p> <p>2 A Mammoth Energy Services, Inc., has</p> <p>3 shareholders, yes.</p> <p>4 Q How do the shareholders get paid?</p> <p>5 A The shareholders own shares.</p> <p>6 Q Uh-huh. And where did the money come to pay</p> <p>7 for those shares?</p> <p>8 A Just like trading any equity, an investor can</p> <p>9 buy shares in whatever stock they want. I don't know</p> <p>10 where they get their money.</p> <p>11 Q Okay. But does Mammoth Energy -- well,</p> <p>12 Mammoth Energy Services, do they pay a dividend?</p> <p>13 A Not currently. Mammoth Energy Services</p> <p>14 historically has paid some dividends, but that's not</p> <p>15 currently in place.</p> <p>16 Q Where does the money come for that?</p> <p>17 A The money for any dividends paid by Mammoth</p> <p>18 Energy Services would come from Mammoth Energy Partners,</p> <p>19 which would receive its money through pulling cash up or</p> <p>20 down or through equity earnings from its, either</p> <p>21 directly or indirectly owned, subsidiaries.</p> <p>22 Q Thank you.</p> <p>23 In the shared function of -- when regards</p> <p>24 to the -- the HR department in Mammoth Energy,</p> <p>25 Incorporated --</p>	<p>1 A Depending on role, same answer. They may have</p> <p>2 had some, none, or all access to -- to Higher Power</p> <p>3 records.</p> <p>4 Q Okay. So -- I mean, some or all or none</p> <p>5 isn't, to -- to me, an acceptable answer. Like, it</p> <p>6 sounds like you don't know.</p> <p>7 A I gave you an answer. If you don't like it,</p> <p>8 then ask a different question.</p> <p>9 Q Okay. I'll try it.</p> <p>10 For the plaintiffs that provide the</p> <p>11 electrical services in Puerto Rico, you know, like your</p> <p>12 linemen, mechanics, the guys that were working in Puerto</p> <p>13 Rico, did Mammoth Energy, Inc., have access to their</p> <p>14 employment records?</p> <p>15 A The HR employees at Mammoth Energy, Inc.,</p> <p>16 depending on role, may have had some access to, let's</p> <p>17 say, Higher Power Electrical payroll and HR records.</p> <p>18 However, not all of the HR employees at Mammoth Energy,</p> <p>19 Inc. -- they may or may not have had access. So your</p> <p>20 question initially was whether or not Mammoth Energy,</p> <p>21 Inc., had access to all of the legal entities; and I</p> <p>22 think that that is an inaccurate characterization.</p> <p>23 Q All right. But at least with Higher Power,</p> <p>24 there's at least some employees at -- at Mammoth Energy,</p> <p>25 Inc., that would have access to the employment files?</p>

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<p>1 <b>A</b> Depending on role, yes.</p> <p>2 <b>Q</b> Depending on whose role?</p> <p>3 <b>MR. STUKENBERG:</b> The role of the</p> <p>4 employees, Dave.</p> <p>5 <b>MR. MOULTON:</b> The ones --</p> <p>6 <b>MR. STUKENBERG:</b> The director of HR is</p> <p>7 going to have a different level of access than the</p> <p>8 payroll coordinator.</p> <p>9 <b>MR. MOULTON:</b> Right.</p> <p>10 <b>Q</b> (By Mr. Moulton) You're talking about that --</p> <p>11 you're talking about the level of access at the -- at</p> <p>12 the Mammoth Energy level not -- not depending on who it</p> <p>13 was working at Higher Power; is that right?</p> <p>14 <b>A</b> Yes. Your question was about who at Mammoth</p> <p>15 Energy and that's --</p> <p>16 <b>Q</b> Yes.</p> <p>17 <b>A</b> -- what I answered.</p> <p>18 <b>Q</b> Yes, but -- yeah. Okay.</p> <p>19 Were the -- were the offer letters for</p> <p>20 the plaintiffs in this case part of any document</p> <p>21 retention policy?</p> <p>22 <b>MR. STUKENBERG:</b> Objection, form.</p> <p>23 <b>A</b> Can you ask that again?</p> <p>24 <b>Q</b> (By Mr. Moulton) Yeah. We've looked at some</p> <p>25 offer letters today?</p>	<p>1 been able to locate offer letters, those have all been</p> <p>2 produced.</p> <p>3 <b>Q</b> (By Mr. Moulton) Okay. Let me ask you -- I</p> <p>4 know you may think this is the same thing, but I'm going</p> <p>5 to ask you something else.</p> <p>6 How -- are there any records we could</p> <p>7 look at to determine whether or not every single worker</p> <p>8 actually got an offer letter and if they did, which</p> <p>9 version?</p> <p>10 <b>MR. STUKENBERG:</b> Objection, form.</p> <p>11 <b>A</b> You've got all the offer letters that -- that</p> <p>12 the defendants have. They've all been produced in this</p> <p>13 matter.</p> <p>14 <b>Q</b> (By Mr. Moulton) Okay. And -- and I</p> <p>15 appreciate that. I'm asking about something else.</p> <p>16 Sometimes there are HR documents, for example, that</p> <p>17 might track, like, okay, this employee got an offer</p> <p>18 letter and it was Version 2627, for example. And so we</p> <p>19 would -- there would be some evidence that they actually</p> <p>20 got one even without having the document.</p> <p>21 So I'm asking you: Is there any evidence</p> <p>22 that you're aware of that would point to whether or not</p> <p>23 any plaintiff in this case actually got an offer letter</p> <p>24 with respect to the work in Puerto Rico?</p> <p>25 <b>A</b> If you're asking whether or not there's an</p>
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<p>1 <b>A</b> Uh-huh.</p> <p>2 <b>Q</b> You've seen several examples. You know what I</p> <p>3 mean by offer letters, correct?</p> <p>4 <b>A</b> Yes.</p> <p>5 <b>Q</b> Okay. Were they subject to any document</p> <p>6 retention policy that you know of?</p> <p>7 <b>MR. STUKENBERG:</b> And I just want to make</p> <p>8 sure we're clear here. Are you talking about, like, an</p> <p>9 internal company policy to retain documents in the</p> <p>10 ordinary course of business; or are you talking about in</p> <p>11 the -- in -- as it relates to litigation?</p> <p>12 <b>MR. MOULTON:</b> Ordinary course of</p> <p>13 business.</p> <p>14 <b>MR. STUKENBERG:</b> Got it. Just wanted to</p> <p>15 make that clarification.</p> <p>16 <b>MR. MOULTON:</b> Yeah.</p> <p>17 <b>A</b> In the ordinary course of business, I'm not</p> <p>18 aware of a specific document retention policy as it</p> <p>19 relates to any of the defendants in this matter.</p> <p>20 <b>Q</b> (By Mr. Moulton) Okay. Do you happen to know</p> <p>21 whether or not any of the defendants in this matter have</p> <p>22 offer letters for every plaintiff in this case?</p> <p>23 <b>MR. STUKENBERG:</b> Objection, form.</p> <p>24 <b>A</b> As I just said, I'm not aware of any document</p> <p>25 retention policy. I believe to the extent that we have</p>	<p>1 electronic record, a version control, and whether or not</p> <p>2 each employee received an offer letter, I'm not aware of</p> <p>3 that field inside of the HR/IS system.</p> <p>4 <b>Q</b> Okay. And, again, that's not exactly the</p> <p>5 question I asked. I'm asking if there's any record you</p> <p>6 know of that could be used to determine whether or not</p> <p>7 any particular plaintiff in this case got an offer</p> <p>8 letter; and if so, which version?</p> <p>9 <b>A</b> I don't believe there's anything that captures</p> <p>10 that -- that specific data.</p> <p>11 <b>Q</b> Okay. Now, you -- are you personally aware of</p> <p>12 whether or not every plaintiff got an offer letter or</p> <p>13 not?</p> <p>14 <b>A</b> No, I'm not personally aware of whether every</p> <p>15 plaintiff got an offer letter or not.</p> <p>16 <b>Q</b> Okay. Are you aware of whether or not the</p> <p>17 general practice was to make sure every single one got</p> <p>18 an offer letter?</p> <p>19 <b>A</b> The general practice was that potential</p> <p>20 employees receive an offer letter, yes.</p> <p>21 <b>Q</b> Okay. That was a general practice, but you</p> <p>22 don't know how well that was complied with; is that</p> <p>23 right?</p> <p>24 <b>A</b> I've stated that I'm not aware of whether or</p> <p>25 not every single employee received an offer letter. I'm</p>

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<p style="text-align: right;">Page 210</p> <p>1 not aware of any field or other report that would 2 capture whether or not every single employee would 3 receive an offer letter. Every offer letter that's 4 responsive to the document request has been produced. 5 Q Do you believe Mr. Broussard ever approved the 6 payments of -- of these additional amounts that we were 7 talking about before that you claim are discretionary 8 into the payroll? 9 MR. STUKENBERG: Objection, form. 10 A If you're asking whether or not Mr. Broussard 11 is part of our payroll approval process -- 12 Q (By Mr. Moulton) No, I'm not -- 13 A -- he's not. 14 Q I'm not asking that, okay? I'm asking whether 15 or not he approved that payroll policy of adding in 16 these extra amounts. 17 MR. STUKENBERG: Objection, form. 18 A If you're asking whether or not 19 Mr. Broussard -- 20 Q (By Mr. Moulton) Answer my question. Don't -- 21 you don't get to say, "If you are asking." That's not 22 my question, okay? 23 A And you don't even know what my answer is 24 because you won't let me speak. 25 Q No --</p>	<p style="text-align: right;">Page 212</p> <p>1 we did not consult Mr. Broussard on -- on discretionary 2 bonuses. 3 MR. STUKENBERG: As it relates to these 4 discretionary bonuses. 5 THE WITNESS: Correct. 6 Q (By Mr. Moulton) In this case, yeah. I 7 wouldn't be asking about Stingray, at least not right 8 now. 9 Okay. 10 MR. STUKENBERG: You done, Dave? 11 MR. MOULTON: No, I'm not done. I'm 12 trying to. 13 Q (By Mr. Moulton) You would agree with me that 14 the defendants in this matter would be -- knew that 15 the -- that the workers would be working over 40 hours 16 in Puerto Rico per week? 17 MR. STUKENBERG: I'm sorry. Can you 18 repeat the question? 19 MR. MOULTON: Yeah. 20 Q (By Mr. Moulton) The defendants in this matter 21 knew that the plaintiffs would be working over 40 hours 22 per week maybe not every week, but very often in Puerto 23 Rico? 24 MR. STUKENBERG: The defendants? 25 MR. MOULTON: Yes.</p>
<p style="text-align: right;">Page 211</p> <p>1 A So shut up -- 2 Q -- hold on. 3 A -- for a second. 4 Q No. 5 MR. STUKENBERG: The question is -- 6 MR. MOULTON: No -- 7 MR. STUKENBERG: -- vague -- 8 MR. MOULTON: -- it's not fair for him to 9 keep -- 10 MR. STUKENBERG: It's vague. It's vague. 11 Q (By Mr. Moulton) Okay. We already talked 12 about what Mr. Broussard did with the -- you know, he -- 13 he gave you advice on two ways to comply. You could 14 either do a -- a day rate with overtime; or you could do 15 hourly with an overtime, correct? 16 A Mr. Broussard offered two compliant policies 17 for us to evaluate, yes. 18 Q Okay. Now, as part of that process, I want to 19 know if you sought advice from him and if he approved 20 about these additional amounts that we've talked about 21 today that get paid on in a discretionary fashion that 22 you've talked about? 23 MR. STUKENBERG: Objection, form. 24 A If you're asking about whether or not we 25 consulted Mr. Broussard on discretionary bonuses, then</p>	<p style="text-align: right;">Page 213</p> <p>1 MR. STUKENBERG: Okay. All the 2 defendants? 3 MR. MOULTON: Yes. 4 A So in regards to the employers Higher Power 5 Electrical and 5 Star, they certainly knew that it would 6 be likely, based on the work demands, that their 7 employees would work more than 40 hours a week. Mammoth 8 Energy Services has no employees, never did anything on 9 the island of Puerto Rico, has no customers or revenues. 10 So they -- they had no knowledge one way or the other 11 and had no employees. 12 Q (By Mr. Moulton) Did Mr. Broussard give any 13 advice to the defendants in this matter about whether or 14 not the plaintiffs were exempt under any exemption? 15 MR. STUKENBERG: And -- 16 Q (By Mr. Moulton) About -- relating to the 17 plaintiffs in this case? 18 A As it relates to the plaintiffs in this case, 19 there may have been some dialogue during the -- the 20 iterative discussion with Mr. Broussard related to 21 white-collar employees as well as for employees driving 22 heavy vehicles. 23 Q At any point did anyone that you're aware of 24 conduct any sort of investigation as to what were the 25 primary job duties of any of the plaintiffs in this</p>

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<p style="text-align: right;">Page 214</p> <p>1 case?</p> <p>2       <b>A</b>     In regards to a quote, unquote, investigation,</p> <p>3 that has a context that I don't believe is -- is</p> <p>4 applicable. In regards to these employees and the work</p> <p>5 that -- that they do, there are certainly job</p> <p>6 descriptions; but to the extent you characterize that as</p> <p>7 an investigation, there is no, quote, unquote,</p> <p>8 investigation.</p> <p>9       Q     Okay. So you're not -- are you aware of</p> <p>10 anyone trying to determine whether or not any of the job</p> <p>11 classifications of the plaintiffs in this case were --</p> <p>12 would qualify as white-collar exemptions?</p> <p>13           MR. STUKENBERG: Prior to any litigation?</p> <p>14           MR. MOULTON: Yes.</p> <p>15       Q     (By Mr. Moulton) That's for you, Mr. Layton.</p> <p>16 What's the answer?</p> <p>17       <b>A</b>     Prior to litigation, I'm not aware as it</p> <p>18 relates to -- to white-collar.</p> <p>19       Q     Okay.</p> <p>20       <b>A</b>     And, you know, as I mentioned earlier, we</p> <p>21 likely discussed, as I recall, white-collar and -- and</p> <p>22 heavy vehicle with Mr. Broussard during the pay practice</p> <p>23 discussion.</p> <p>24       Q     Are you relying on Mr. -- anything</p> <p>25 Mr. Broussard said about the white-collar exemptions for</p>	<p style="text-align: right;">Page 216</p> <p>1 white-collar workers?</p> <p>2       <b>A</b>     That's not at all what I testified about.</p> <p>3       Q     Okay. Well --</p> <p>4       <b>A</b>     I said that came up during the iterative</p> <p>5 dialogue with Mr. Broussard as well as heavy vehicles.</p> <p>6       Q     Okay. So what did Mr. Broussard say that led</p> <p>7 you to believe, if you did, that any of the plaintiffs</p> <p>8 in this matter were exempt as white-collar --</p> <p>9 white-collar employees?</p> <p>10       <b>A</b>     Are you asking me whether or not we're relying</p> <p>11 on Mr. Broussard's advice prior to hiring these</p> <p>12 employees in relation to the defense of this matter?</p> <p>13       Q     I'll take that question, except move it up</p> <p>14 from not prior to -- to hiring them but during the time</p> <p>15 they're also working there.</p> <p>16           MR. STUKENBERG: We're not asserting any</p> <p>17 white-collar --</p> <p>18           MR. MOULTON: Yeah, you are.</p> <p>19           MR. STUKENBERG: Okay.</p> <p>20           MR. MOULTON: You put it in your</p> <p>21 discovery responses.</p> <p>22           Okay. Are -- so are you not -- are you</p> <p>23 not?</p> <p>24           MR. STUKENBERG: Go ahead. You can</p> <p>25 answer. Whatever you talked about with Mr. Broussard</p>
<p style="text-align: right;">Page 215</p> <p>1 a -- any affirmative defense in this case?</p> <p>2           MR. STUKENBERG: Related to white-collar?</p> <p>3           MR. MOULTON: Yeah.</p> <p>4       <b>A</b>     Regards to white-collar defense in this case?</p> <p>5       Q     (By Mr. Moulton) Uh-huh.</p> <p>6       <b>A</b>     No.</p> <p>7       Q     Or a good-faith defense?</p> <p>8       <b>A</b>     Certainly relying on Mr. Broussard's counsel</p> <p>9 that he provided in relation to -- to good faith, yes.</p> <p>10       Q     Okay. So what -- what about Mr. Broussard's</p> <p>11 conversations led any of the defendants in this matter</p> <p>12 to believe that any of the plaintiffs could be exempt as</p> <p>13 white-collar -- white-collar employees?</p> <p>14           MR. STUKENBERG: Objection,</p> <p>15 mischaracterizes the testimony.</p> <p>16       <b>A</b>     That's not what I said about white-collar.</p> <p>17       Q     (By Mr. Moulton) And -- and I'm not -- I'm not</p> <p>18 saying you did. I'm saying is there anything that</p> <p>19 Mr. Broussard said that you're aware of that the</p> <p>20 defendants are relying upon for their good-faith defense</p> <p>21 that plaintiffs might be white-collar workers?</p> <p>22       <b>A</b>     And I think my testimony speaks for itself in</p> <p>23 regards to the discussion with Mr. Broussard on</p> <p>24 white-collar workers.</p> <p>25       Q     So y'all didn't have any discussions about</p>	<p style="text-align: right;">Page 217</p> <p>1 about white-collar exemptions.</p> <p>2       <b>A</b>     So we -- we certainly discussed during the</p> <p>3 iterative analysis whether or not there may be a</p> <p>4 white-collar exemption or whether or not there may be a</p> <p>5 heavy-vehicle exemption for certain employees.</p> <p>6       Q     (By Mr. Moulton) And I -- I hear you on heavy</p> <p>7 vehicle. We're going to get to that in a minute once we</p> <p>8 can finish up on white-collar. Did he give an opinion</p> <p>9 to you guys that any of the plaintiffs in this case</p> <p>10 would be exempt as white-collar workers?</p> <p>11       <b>A</b>     Regards to white-collar workers, Mr. Broussard</p> <p>12 had some discussion with Mr. Beagle, among others, about</p> <p>13 employee classification and whether or not some may fall</p> <p>14 under white-collar. I don't believe, for the majority</p> <p>15 of the plaintiffs in this case, that -- that we've</p> <p>16 asserted a white-collar defense.</p> <p>17       Q     Okay. Do you know of any in particular that</p> <p>18 you are asserting a white-collar defense?</p> <p>19       <b>A</b>     Our responses speak for themselves.</p> <p>20           MR. STUKENBERG: Yeah, I mean, that's --</p> <p>21 go ahead.</p> <p>22       Q     (By Mr. Moulton) All right. And let's talk</p> <p>23 about the heavy vehicle. Did Mr. Broussard tell the --</p> <p>24 any of the defendants in this matter that the plaintiffs</p> <p>25 would be exempt under the Motor Carrier Act?</p>

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<p>1 A There was certainly some dialogue with</p> <p>2 Mr. Broussard and the Motor Carrier Act and, you know,</p> <p>3 certainly some -- some natural tie-in with that 16-hour</p> <p>4 monitoring that I've mentioned several times by our</p> <p>5 supervisors.</p> <p>6 Q Okay. And what did he say about the</p> <p>7 applicability of the Motor Carrier Act to any of the</p> <p>8 plaintiffs in this case?</p> <p>9 A The general discussion was what -- there could</p> <p>10 be some applicability of the Motor Carrier Act.</p> <p>11 Q Okay. So other than him saying that it might</p> <p>12 apply, he didn't say anything else?</p> <p>13 A I said the general discussion.</p> <p>14 Q Uh-huh.</p> <p>15 A It's, you know, a factual analysis.</p> <p>16 Q Okay. So who did he say could be -- who</p> <p>17 might -- who did he say might be exempt under the Motor</p> <p>18 Carrier Act, pray tell?</p> <p>19 A It would depend on job classification and</p> <p>20 whether or not they were driving DOT regulated vehicles.</p> <p>21 Q Okay. Did he talk to you about small truck</p> <p>22 and SAFETEA-LU exceptions?</p> <p>23 MR. STUKENBERG: Did you say SAFETEA --</p> <p>24 MR. MOULTON: SAFETEA-LU.</p> <p>25 MR. STUKENBERG: Loop?</p>	<p>1 this matter decide that any of the plaintiffs were</p> <p>2 exempt under the Motor Carrier Act before their work in</p> <p>3 Puerto Rico ended?</p> <p>4 MR. STUKENBERG: Decide?</p> <p>5 MR. MOULTON: Yeah. Yeah.</p> <p>6 Q (By Mr. Moulton) Did you make a determination?</p> <p>7 MR. STUKENBERG: I'll go ahead and object</p> <p>8 to form.</p> <p>9 You can answer.</p> <p>10 A I'm not aware of a determination and to the</p> <p>11 extent there -- if there would have been conversations</p> <p>12 about that, they would have been privileged.</p> <p>13 Q (By Mr. Moulton) Not if you're relying on it</p> <p>14 for either a good-faith defense or other defenses in</p> <p>15 this matter. So I'll ask that again. If you're going</p> <p>16 to rely on it, you've got to disclose it. So please</p> <p>17 answer.</p> <p>18 A And our responses in the matter speak for</p> <p>19 themselves in regards to motor carrier exemptions.</p> <p>20 Q Have -- have the defendants produced all the</p> <p>21 documents related to necessary recordkeeping that would</p> <p>22 be required under, say, DOT rules that would apply under</p> <p>23 the Motor Carrier Act?</p> <p>24 A The defendants have produced all documents</p> <p>25 required to be produced in this matter.</p>
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<p>1 MR. MOULTON: LU, right? Isn't it</p> <p>2 SAFETEA, L-U?</p> <p>3 Q (By Mr. Moulton) Did he talk to you --</p> <p>4 MR. STUKENBERG: SAFETEA-LU? Object to</p> <p>5 form.</p> <p>6 Q (By Mr. Moulton) Yeah. Did you -- did he talk</p> <p>7 to you about drivers who also drive small vehicles, like</p> <p>8 under 10,000 pounds?</p> <p>9 MR. STUKENBERG: Objection, form.</p> <p>10 A There may have been some dialogue about,</p> <p>11 quote, unquote, smaller vehicles; but there's a -- you</p> <p>12 know, a technical analysis that goes into that -- that</p> <p>13 10,000-pound rule and whether or not they're pulling</p> <p>14 trailers. So I think that's -- that's a pretty deep</p> <p>15 rabbit hole.</p> <p>16 Q (By Mr. Moulton) So did the -- did any of the</p> <p>17 defendants in this matter decide prior to the end of</p> <p>18 the -- the work being done in -- in Puerto Rico that any</p> <p>19 of the plaintiffs were exempt under the Motor Carrier</p> <p>20 Act?</p> <p>21 MR. STUKENBERG: I'm sorry. Can you</p> <p>22 repeat the question?</p> <p>23 MR. MOULTON: Yeah.</p> <p>24 MR. STUKENBERG: I missed it.</p> <p>25 Q (By Mr. Moulton) Did any of the defendants in</p>	<p>1 MR. STUKENBERG: No rush, Dave; but</p> <p>2 whenever you get a --</p> <p>3 MR. MOULTON: Yeah. No, I'm getting</p> <p>4 close to --</p> <p>5 MR. STUKENBERG: -- for a break, just let</p> <p>6 me know.</p> <p>7 MR. MOULTON: Oh, yeah. Okay. If y'all</p> <p>8 want to do a quick break, let's do it; and then I'll --</p> <p>9 I'll take up a couple things and we'll be done.</p> <p>10 MR. STUKENBERG: Great.</p> <p>11 THE VIDEOGRAPHER: All right. We're off</p> <p>12 the record at 2:42.</p> <p>13 (Recess from 2:42 p.m. to 2:56 p.m.)</p> <p>14 THE VIDEOGRAPHER: All right. We're back</p> <p>15 on the record at 2:56 p.m.</p> <p>16 Q (By Mr. Moulton) All right. Mr. Layton, I</p> <p>17 want to cover just a couple more things about these</p> <p>18 payroll records. Back to this Justin Washburn pay stub</p> <p>19 that we looked at earlier in Plaintiff's Exhibit 170, do</p> <p>20 you know why 16 was regular and 16 was counted as</p> <p>21 overtime for this pay stub?</p> <p>22 A I don't.</p> <p>23 MR. STUKENBERG: What exhibit is this?</p> <p>24 MR. MOULTON: 170.</p> <p>25 A It would seem odd at a high-level glance</p>

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<p style="text-align: right;">Page 222</p> <p>1 given -- given the hours; but based on the -- the</p> <p>2 earning statement, I don't know why it was coded that</p> <p>3 way.</p> <p>4 Q (By Mr. Moulton) It would seem to me -- we've</p> <p>5 already established this guy worked two days. It seemed</p> <p>6 like to me that it would be -- the calculation would</p> <p>7 make more sense if it was a rate of 37.84 with 32 hour</p> <p>8 units. Would you agree?</p> <p>9 A That would make more sense, yes.</p> <p>10 Q That's -- and I mean, like, 32 regular units,</p> <p>11 right?</p> <p>12 A Yes.</p> <p>13 Q Okay. But if it was that way, would he have</p> <p>14 still got the same day rate?</p> <p>15 A Well, there's a day rate code for which we,</p> <p>16 appears, selected an inappropriate pay code. He got a</p> <p>17 discretionary bonus of 86.40.</p> <p>18 Q All right. And so my question is: If you</p> <p>19 have them where it shows all regular, the discretionary</p> <p>20 bonus would have to be bigger, right, to get it to 1600?</p> <p>21 MR. STUKENBERG: Objection, form.</p> <p>22 A Well, discretionary bonus is discretionary.</p> <p>23 So as the employer, we can make that whatever we want.</p> <p>24 In this particular case Mr. Washburn received a</p> <p>25 discretionary amount of \$86.40.</p>	<p style="text-align: right;">Page 224</p> <p>1 that you would be targeting?</p> <p>2 MR. STUKENBERG: Objection, form.</p> <p>3 A That mischaracterizes my testimony as it</p> <p>4 relates to discretionary bonuses and getting the -- the</p> <p>5 employee an employee goodwill closer to their targeted</p> <p>6 earnings amount in the event they had to work seven days</p> <p>7 and 16 hours a day.</p> <p>8 Q (By Mr. Moulton) Okay. So you agree that it</p> <p>9 can be used to get them closer, and my question is: Can</p> <p>10 it be used to get them to the targeted amount?</p> <p>11 A Their targeted amounts were never, in this</p> <p>12 case, \$800 per day because if you worked the 224 hours</p> <p>13 for over a period of 14 days, it would not be divisible</p> <p>14 by 800.</p> <p>15 Q So --</p> <p>16 A And I understand you don't want to talk about</p> <p>17 those, but that's the case 98-plus percent of the time.</p> <p>18 Q So you're saying 98 percent of the time the</p> <p>19 mechanics of the hourly rate and the overtime comes out</p> <p>20 to a number that's pennies off of the targeted rate,</p> <p>21 right?</p> <p>22 A The hourly employees, if you run through the</p> <p>23 mechanics for their hours worked, do not equal these per</p> <p>24 day columnar amounts.</p> <p>25 Q Right. It's off by pennies, correct?</p>
<p style="text-align: right;">Page 223</p> <p>1 Q (By Mr. Moulton) So the discretionary amount</p> <p>2 is -- doesn't have any particular target in mind. It's</p> <p>3 totally just whatever the defendants want to do?</p> <p>4 A I don't believe that's been my testimony.</p> <p>5 Discretionary, by its nature, is discretionary based on</p> <p>6 timing, amount, and whether or not it's paid.</p> <p>7 Q Okay. So let me just make sure: With the</p> <p>8 discretionary amounts that you're -- that you've been</p> <p>9 talking about, were they ever meant to bring the workers</p> <p>10 up to any particular target?</p> <p>11 A There were certainly discretionary amounts</p> <p>12 that -- discretionary payments that were made in order</p> <p>13 to get employees closer to what their targeted earnings</p> <p>14 amount would be approximately if they worked seven days</p> <p>15 of 16 hours a day. Again, if you run out the hours,</p> <p>16 they never got exactly to their targeted amounts. They</p> <p>17 were usually a few pennies or a few dollars over those</p> <p>18 targeted amounts just due to the mechanics behind it.</p> <p>19 Q Okay. I -- I think what you're really trying</p> <p>20 to say is yes, but you're just so caught up on details?</p> <p>21 MR. STUKENBERG: Objection. His answer</p> <p>22 is his answer.</p> <p>23 Q (By Mr. Moulton) So there are times where</p> <p>24 the -- quote, the discretionary amount is meant to bring</p> <p>25 up the worker to the targeted amount that they're --</p>	<p style="text-align: right;">Page 225</p> <p>1 A It's off by pennies or dollars. It's no</p> <p>2 different than a salaried employee that is paid every</p> <p>3 other week that -- they may be earning \$60,000 a year.</p> <p>4 They're paid salary. At the end of the year, based on</p> <p>5 payroll, it may be off, you know, a few pennies here,</p> <p>6 there. For an hourly employee that may work an extra</p> <p>7 hour of overtime here or there, while you may have an</p> <p>8 employee -- hourly employee that's -- that's targeted to</p> <p>9 make \$60,000 in a year, it may be plus or minus based on</p> <p>10 actual hours, worked.</p> <p>11 Q Well, looking at Exhibit 151, we can reverse</p> <p>12 the math that we talked about earlier to figure out</p> <p>13 exactly the difference. Specifically, you can take that</p> <p>14 "PR Storm - Per Hour" number, for example, for that</p> <p>15 foreman. You see that 66.22 on Exhibit 151?</p> <p>16 If we take that number, according to the</p> <p>17 math we did earlier, and you multiply it by 148, you're</p> <p>18 going to get what he would get in a full week, correct,</p> <p>19 of working seven days?</p> <p>20 A At 148 for seven days?</p> <p>21 Q So --</p> <p>22 A That doesn't.</p> <p>23 Q Yeah. So 66.22 times 148 would give us what</p> <p>24 that employee work -- gets if he works the whole week</p> <p>25 like you keep talking about. And, for example --</p>

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<p style="text-align: right;">Page 226</p> <p>1 because I'll help you out here -- comes out to be</p> <p>2 9800.56. Isn't that the right that he would get --</p> <p>3 isn't that the amount that he would get?</p> <p>4 <b>A I haven't run through the -- the math on</b></p> <p>5 <b>regular and overtime at this rate.</b></p> <p>6 Q Okay. So I have a calculator up; and, you</p> <p>7 know, we can do the math together. So 66.22 times 148</p> <p>8 is \$9,800.56. That's what he's going to get for the</p> <p>9 whole week when you go do your 66.22 times your 40 plus</p> <p>10 112 times 66.22 times one and a half. That's the same</p> <p>11 thing, okay? That's what he's going to get. Does -- do</p> <p>12 you -- do you not know that?</p> <p>13 <b>A If you're asking me to track all your</b></p> <p>14 <b>calculations, I don't know what you're doing over there.</b></p> <p>15 Q Yeah. Well, we're doing the same thing that</p> <p>16 y'all -- we did in that spreadsheet earlier; but we're</p> <p>17 doing it in reverse.</p> <p>18 <b>A If you want to pull up the spreadsheet and</b></p> <p>19 <b>have me talk about it, I'm happy to do it. But if</b></p> <p>20 <b>you're going to do math and ask me to follow you and do</b></p> <p>21 <b>it in my head, I'm not going to do that. That's a waste</b></p> <p>22 <b>of my time.</b></p> <p>23 Q Okay. So 9800.56 -- that's fair enough.</p> <p>24 I'll -- I'll keep doing it, and I think get -- I think</p> <p>25 you'll understand this. 9800.56, you divide it by 7.</p>	<p style="text-align: right;">Page 228</p> <p>1 <b>spreadsheet. So if you're asking me to do this --</b></p> <p>2 MR. STUKENBERG: The numbers don't --</p> <p>3 that you're barking out don't match the numbers in the</p> <p>4 spreadsheet, which makes it (inaudible).</p> <p>5 THE REPORTER: Which makes it what?</p> <p>6 MR. STUKENBERG: Of limited utility.</p> <p>7 Q (By Mr. Moulton) All right. You understand</p> <p>8 spreadsheets, right? If you take 59 point -- if you</p> <p>9 take these numbers right here, equals that number times</p> <p>10 148, we get the amounts, okay? Which is actually what</p> <p>11 that Column M is, right?</p> <p>12 MR. STUKENBERG: So what's the question?</p> <p>13 MR. MOULTON: So we're going to get</p> <p>14 there.</p> <p>15 Q (By Mr. Moulton) The problem is that when, in</p> <p>16 your payroll system, you have them rounded. So let's</p> <p>17 just see here. Round that to -- let's use exactly</p> <p>18 59.12, not 59.12 and going on forever. We get the</p> <p>19 amounts that would be paid for an entire week at these</p> <p>20 rates.</p> <p>21 Do you follow? The exact amounts, that's</p> <p>22 what's going to be in your payroll.</p> <p>23 <b>A If the employee works seven days for 16 hours</b></p> <p>24 <b>per day or is available for those 16 hours per day.</b></p> <p>25 Q Yes, yes.</p>
<p style="text-align: right;">Page 227</p> <p>1 Comes out to the targeted rate of \$1400.08.</p> <p>2 Do you see that?</p> <p>3 <b>A No, I can't see that. I don't know what</b></p> <p>4 <b>you're doing over there.</b></p> <p>5 MR. STUKENBERG: Same objection. If you</p> <p>6 want to go through the formula with him, do it on the</p> <p>7 spreadsheet with the document.</p> <p>8 MR. MOULTON: All right. We can do that</p> <p>9 again. I just thought he would be with me.</p> <p>10 Q (By Mr. Moulton) So before -- back -- we'll go</p> <p>11 to this exhibit, 167. That's a native document. We</p> <p>12 talked about how if you take the budgeted day rate and</p> <p>13 multiply it by 7 for the whole week and divide it by the</p> <p>14 total adjusted hours of 148, we'd get to that hourly</p> <p>15 rate.</p> <p>16 Do you recall that?</p> <p>17 <b>A Yes, sir.</b></p> <p>18 Q Okay. So we can also do the reverse to see</p> <p>19 what a person would actually get for the week. 59.12,</p> <p>20 for example, in that first one, times 148 yields or</p> <p>21 equals \$8,749.76. So do you see that math, how you can</p> <p>22 just multiply the hourly rates times 148 to get what the</p> <p>23 pay for the week would be?</p> <p>24 <b>A All I see is a spreadsheet on my screen. So</b></p> <p>25 <b>the mechanics, yeah, I follow you. Like, all I see is a</b></p>	<p style="text-align: right;">Page 229</p> <p>1 Okay. So now you understand. We can</p> <p>2 take the hourly rates and multiply them by 148 to get</p> <p>3 what the total pay would be for the week?</p> <p>4 <b>A If the employee either works or is available</b></p> <p>5 <b>to work the requisite hours.</b></p> <p>6 Q Yes, sir.</p> <p>7 Okay. So we were talking earlier about</p> <p>8 how you're saying 98 percent of the time the -- the math</p> <p>9 is going to come out to be a little different --</p> <p>10 MR. STUKENBERG: What's the question?</p> <p>11 Q (By Mr. Moulton) -- and we can see what those</p> <p>12 differences are by just doing this math. So, for</p> <p>13 example, at the 59.12 rate, the difference is going to</p> <p>14 be 24 cents.</p> <p>15 Do you see that?</p> <p>16 <b>A I see that, but I think your characterization</b></p> <p>17 <b>of the 98 percent is inappropriate. That's not exactly</b></p> <p>18 <b>what my testimony was.</b></p> <p>19 Q For the J Lineman, the difference is going to</p> <p>20 be 40 cents. Do you see that?</p> <p>21 <b>A I do.</b></p> <p>22 Q For the A Class, the difference will be 36</p> <p>23 cents. Do you see that?</p> <p>24 <b>A I do.</b></p> <p>25 Q Okay. For B Class, the difference will be 32</p>

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<p style="text-align: right;">Page 230</p> <p>1 cents, correct?</p> <p>2     <b>A</b>     <b>Yes.</b></p> <p>3     <b>Q</b>     And for Hot apprentice, the difference would</p> <p>4 be 28 cents?</p> <p>5     <b>A</b>     <b>Yes.</b></p> <p>6     <b>Q</b>     And for the Apprentice slash Groundsman, it</p> <p>7 would be 24 cents?</p> <p>8     <b>A</b>     <b>That's correct.</b></p> <p>9     <b>Q</b>     Okay. And these same numbers would apply even</p> <p>10 if they're a different position, but if they're -- you</p> <p>11 know, if these -- at these hourly rates in Column K that</p> <p>12 we've been talking about, correct?</p> <p>13     <b>A</b>     <b>To the extent that the hours are worked or</b></p> <p>14 <b>available to work, the calculation would be correct,</b></p> <p>15 <b>yes.</b></p> <p>16     <b>Q</b>     Okay. We're going to take these calculations</p> <p>17 that me and you just worked through and make this a new</p> <p>18 spreadsheet and we will label that as Plaintiff's</p> <p>19 Exhibit 174.</p> <p>20             (Plaintiffs' Exhibit 174 marked.)</p> <p>21     <b>Q</b>     (By Mr. Moulton) All right. Back to your</p> <p>22 98 percent comment. I'm trying to understand it.</p> <p>23 You're saying that 98 percent of the payroll matches</p> <p>24 your math of when someone works a full week, that the --</p> <p>25 the amount doesn't equal exactly the targeted rate?</p>	<p style="text-align: right;">Page 232</p> <p>1 <b>excess of 98 percent of the time, the detailed records</b></p> <p>2 <b>for the hourly employees record regular and overtime</b></p> <p>3 <b>hours.</b></p> <p>4     <b>Q</b>     Okay. So -- and they -- they still may have</p> <p>5 additional amounts added? You're just saying that</p> <p>6 98 percent of them have regular rates, overtime rates,</p> <p>7 regular hours, overtime hours, correct?</p> <p>8     <b>A</b>     <b>98-plus percent of the population for the</b></p> <p>9 <b>hourly employees is paid based on regular and overtime</b></p> <p>10 <b>hours.</b></p> <p>11     <b>Q</b>     Okay. And that's not surprising because these</p> <p>12 guys worked full seven days all the time? I mean, the</p> <p>13 vast majority of the time they worked is a full seven</p> <p>14 days, correct?</p> <p>15     <b>A</b>     <b>There were various amounts of time that the</b></p> <p>16 <b>employees worked.</b></p> <p>17     <b>Q</b>     Let me ask you this: What percentage of the</p> <p>18 time did they work a full seven days?</p> <p>19     <b>A</b>     <b>For most of the employee base, they worked the</b></p> <p>20 <b>full seven days, I'd say, the majority of the time.</b></p> <p>21     <b>Q</b>     Okay. Do you know the exact percentage?</p> <p>22     <b>A</b>     <b>No, I don't; but since you're a math genius,</b></p> <p>23 <b>you can probably figure it out.</b></p> <p>24     <b>Q</b>     I am a math genius. I love math.</p> <p>25             All right. So if 98 percent of the time</p>
<p style="text-align: right;">Page 231</p> <p>1             MR. STUKENBERG: Objection --</p> <p>2     <b>Q</b>     (By Mr. Moulton) Is that what you're saying?</p> <p>3             MR. STUKENBERG: Objection, form.</p> <p>4     <b>A</b>     <b>That's not what my testimony was.</b></p> <p>5     <b>Q</b>     (By Mr. Moulton) Okay. Can you -- can you</p> <p>6 explain what you were trying to say?</p> <p>7     <b>A</b>     <b>My testimony speaks for itself, and I'll</b></p> <p>8 <b>reincorporate it as it relates to the questions asked</b></p> <p>9 <b>and answered.</b></p> <p>10     <b>Q</b>     You've got to answer this question, sir. You</p> <p>11 don't get to say -- unless your attorney says you're not</p> <p>12 going to answer, you're not the one who gets to say, "I</p> <p>13 don't answer a question."</p> <p>14             Okay. The 98 percent comment you've been</p> <p>15 making, you've done some statistical analysis you've</p> <p>16 also talked about, okay? In your statistical analysis,</p> <p>17 you referred to 98 percent of the payroll being what?</p> <p>18 What is the fill in the blank?</p> <p>19     <b>A</b>     <b>98 percent, in excess of that amount, the</b></p> <p>20 <b>hours were entered and calculated based on regular and</b></p> <p>21 <b>overtime earnings.</b></p> <p>22     <b>Q</b>     Meaning that you -- there wasn't any</p> <p>23 additional amount added? Is that what you mean?</p> <p>24 Just -- it was just straight regular and overtime?</p> <p>25     <b>A</b>     <b>I'm saying it's the payroll records -- in</b></p>	<p style="text-align: right;">Page 233</p> <p>1 they're working seven days anyways, then your 98 percent</p> <p>2 figure that they were paid just their overtime and</p> <p>3 regular wouldn't really mean much, would it?</p> <p>4             MR. STUKENBERG: Objection, form.</p> <p>5     <b>A</b>     <b>It means a lot.</b></p> <p>6     <b>Q</b>     (By Mr. Moulton) Why?</p> <p>7     <b>A</b>     <b>So you can characterize it however you want.</b></p> <p>8     <b>Q</b>     Why would it mean -- what does it mean to you</p> <p>9 and why?</p> <p>10     <b>A</b>     <b>I've explained that, and I'll reincorporate</b></p> <p>11 <b>that testimony.</b></p> <p>12     <b>Q</b>     Okay. So it's -- are you saying, also, that</p> <p>13 it's less than 2 percent of the time that there's a day</p> <p>14 rate line item on a pay stub?</p> <p>15     <b>A</b>     <b>Yes.</b></p> <p>16     <b>Q</b>     Okay. But even though you did this 98 percent</p> <p>17 analysis, you didn't bother to see what percent of the</p> <p>18 time they actually worked the full seven days? That's</p> <p>19 not a calculation you did?</p> <p>20     <b>A</b>     <b>Does it matter? They're paid hourly 98-plus</b></p> <p>21 <b>percent of the time.</b></p> <p>22     <b>Q</b>     Okay. No, answer my question. Just "yes" or</p> <p>23 "no." Did you do it?</p> <p>24     <b>A</b>     <b>Did I go determine how many days each employee</b></p> <p>25 <b>worked? No.</b></p>

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<p>1 Q No.</p> <p>2 A They were paid hourly --</p> <p>3 MR. MOULTON: Will, are you going to --</p> <p>4 A -- and overtime --</p> <p>5 MR. MOULTON: -- keep letting him do</p> <p>6 this, keep not --</p> <p>7 A -- 98 percent of the time --</p> <p>8 MR. MOULTON: -- answering the question?</p> <p>9 MR. STUKENBERG: He answered your</p> <p>10 question.</p> <p>11 MR. MOULTON: No, he didn't. No.</p> <p>12 MR. STUKENBERG: And really, we're just</p> <p>13 talking circles.</p> <p>14 MR. MOULTON: No, we're not. We're not</p> <p>15 talking in circles.</p> <p>16 Q (By Mr. Moulton) I want to know if you</p> <p>17 determined what percent of the time the workers either</p> <p>18 worked a full seven days or not.</p> <p>19 MR. STUKENBERG: And he said he didn't do</p> <p>20 that.</p> <p>21 Q (By Mr. Moulton) You didn't do that?</p> <p>22 A No, I didn't do that.</p> <p>23 Q Okay. What was Higher Power's policy with</p> <p>24 regards to lunch breaks in Puerto Rico?</p> <p>25 A Generally the employees got breaks. In a</p>	<p>1 Q No.</p> <p>2 A -- condescending remarks --</p> <p>3 Q No.</p> <p>4 A -- but it -- it's not additive to this</p> <p>5 process.</p> <p>6 Q No.</p> <p>7 A It hasn't been all day long.</p> <p>8 Q No. Okay. You can keep telling me all day</p> <p>9 long that because Mammoth Energy Services doesn't have</p> <p>10 employees that it didn't track something, and I don't</p> <p>11 care. Like, I just want to know if they did regardless,</p> <p>12 okay? And you can -- if they didn't, just say no.</p> <p>13 A No.</p> <p>14 Q Did -- did any of the defendants in this</p> <p>15 matter track whether or not any of the plaintiffs</p> <p>16 took -- took lunch breaks and how long they were at any</p> <p>17 point when they were working in Puerto Rico? That's a</p> <p>18 "yes" or "no" question.</p> <p>19 A Mammoth Energy Services, Inc., has never had</p> <p>20 any employees. So there is no lunch break to track.</p> <p>21 Higher Power and 5 Star, I'm not aware of a tracking</p> <p>22 mechanism for lunch breaks, but the employees were</p> <p>23 provided those lunch breaks as well as lunches in many</p> <p>24 cases for which they could take with them.</p> <p>25 Q Okay. And, again, you keep on thinking I'm</p>
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<p>1 number of instances, the employees, depending on the</p> <p>2 area of the island that they were working on, received</p> <p>3 lunches from the barges on which the overwhelming</p> <p>4 majority of the employees were -- were housed on.</p> <p>5 Q At any point did Higher Power or Cobra or</p> <p>6 Mammoth Energy Services, did they ever track whether or</p> <p>7 not people took breaks and how much time?</p> <p>8 A Mammoth --</p> <p>9 MR. STUKENBERG: Can you give us a time</p> <p>10 period?</p> <p>11 MR. MOULTON: During the time that they</p> <p>12 were working in Puerto Rico.</p> <p>13 MR. STUKENBERG: The totality of the time</p> <p>14 they were working in Puerto Rico?</p> <p>15 MR. MOULTON: Yes.</p> <p>16 A Mammoth Energy Services never had a single</p> <p>17 employee in Puerto Rico. So there were no lunch breaks</p> <p>18 to -- to --</p> <p>19 Q (By Mr. Moulton) No, that's not my question.</p> <p>20 A -- track.</p> <p>21 Q I'm asking tracking.</p> <p>22 A And I --</p> <p>23 Q Okay. Hold on.</p> <p>24 A -- was answering about tracking and you can</p> <p>25 make your faces and your --</p>	<p>1 asking something else.</p> <p>2 I want to know if any of the defendants</p> <p>3 tracked any of the workers' lunches, not whether any of</p> <p>4 the defendants tracked their own people's lunches. I</p> <p>5 want to know if any of the defendants tracked the</p> <p>6 lunches of the plaintiffs in this case. "Yes" or "no"?</p> <p>7 MR. STUKENBERG: I'd object. The witness</p> <p>8 has answered this question now, I think, four times.</p> <p>9 A I've answered it, and I'll reincorporate my</p> <p>10 previous testimony.</p> <p>11 Q (By Mr. Moulton) Have any of the defendants in</p> <p>12 this matter made any estimates about what the damages</p> <p>13 could be if plaintiffs were correct?</p> <p>14 MR. STUKENBERG: Objection. Instruct the</p> <p>15 witness not to answer on the basis of privilege.</p> <p>16 Q (By Mr. Moulton) Okay. So, first, I want to</p> <p>17 know if that determination has ever been made without</p> <p>18 asking what it was. Has anybody conducted that</p> <p>19 analysis?</p> <p>20 MR. STUKENBERG: Objection on the basis</p> <p>21 of privilege. I'm going to instruct the witness not to</p> <p>22 answer to the extent that any of that has been done in</p> <p>23 consultation with legal or with the assistance of legal.</p> <p>24 Q (By Mr. Moulton) Are you going to follow your</p> <p>25 counsel's advice, Mr. Layton?</p>

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<p>1 A Yes, I am.</p> <p>2 Q Okay. What was the name of the security</p> <p>3 company that was used in Puerto Rico?</p> <p>4 A There were two different security companies,</p> <p>5 as I recall, that were utilized in Puerto Rico as</p> <p>6 subcontractors to Cobra Acquisitions.</p> <p>7 Q Okay. What were the names of those security</p> <p>8 companies?</p> <p>9 A I believe the names of -- of those security</p> <p>10 companies were Alpha Lobo and Espada, E-s-p-a-d-a.</p> <p>11 Q So with Alpha Lobo, there's no "Inc."?</p> <p>12 There's no "LLC"? Do you know the exact name of that</p> <p>13 entity?</p> <p>14 A No.</p> <p>15 Q Okay. Are they a Mammoth -- are they part of</p> <p>16 the Mammoth empire?</p> <p>17 A I don't know what an empire is, but neither</p> <p>18 one of those entities is either directly or indirectly</p> <p>19 owned in any way, shape, or form by any Mammoth Energy</p> <p>20 Services company.</p> <p>21 Q Okay. What about Espada? Are they part of</p> <p>22 the Mammoth empire?</p> <p>23 A Again, I don't know what an empire is.</p> <p>24 Espada's not related to any subsidiary of Mammoth Energy</p> <p>25 Services, Inc., or any of its direct or indirect</p>	<p>1 lodging boat that they informally called a Russian</p> <p>2 prison ship. I don't know if it actually was or not.</p> <p>3 Do you know what that is?</p> <p>4 A There were two barges that were utilized to</p> <p>5 house a number of employees of Cobra Acquisitions and</p> <p>6 its subcontractors, which would include Higher Power and</p> <p>7 5 Star.</p> <p>8 Q So which -- which of the entities would be</p> <p>9 directly providing the -- the lodging for the workers in</p> <p>10 Puerto Rico?</p> <p>11 A The lodging for the workers that were housed</p> <p>12 on -- on those barges -- those two barges were chartered</p> <p>13 by Tiger Shark Logistics.</p> <p>14 Q And who paid Tiger Shark?</p> <p>15 A Cobra Acquisitions subcontracted Tiger Shark</p> <p>16 to provide those barges.</p> <p>17 Q Okay. And as far as, like, the meals on the</p> <p>18 island, who was providing those?</p> <p>19 A The meals in -- in large part were provided on</p> <p>20 those barges for the employees that stayed on the</p> <p>21 barges.</p> <p>22 Q Okay. That answers where, but I'm asking who.</p> <p>23 A Again, Tiger Shark chartered those barges and</p> <p>24 Tiger Shark would have had agreements in place with</p> <p>25 caterers and -- and chefs to prepare meals on -- on</p>
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<p>1 subsidiaries.</p> <p>2 Q Are you aware of any overtime complaints,</p> <p>3 lawsuits, arbitrations, complaint -- you know, any --</p> <p>4 about overtime that dealt with any employee with -- of</p> <p>5 Espada?</p> <p>6 A I'm aware of a matter between either Espada or</p> <p>7 Alpha Lobo. I don't recall which; but, yes, I'm -- I'm</p> <p>8 aware.</p> <p>9 Q And what do you know about that?</p> <p>10 MR. STUKENBERG: Other than whatever's --</p> <p>11 you're aware is privileged. If you have nonprivileged</p> <p>12 information, you can provide it.</p> <p>13 A I don't have any nonprivileged information</p> <p>14 associated with -- with either of those entities.</p> <p>15 Q (By Mr. Moulton) Okay. So other than</p> <p>16 discussions from your lawyers, you didn't have</p> <p>17 independent knowledge that anyone -- any employee had</p> <p>18 sued Espada, for example, for overtime regarding his</p> <p>19 work in Puerto Rico?</p> <p>20 A I'm not aware of any nonprivileged</p> <p>21 conversations.</p> <p>22 Q Okay. And the same for Alpha Lobo?</p> <p>23 A That's correct.</p> <p>24 Q Okay. I've heard the term from some of the</p> <p>25 plaintiffs in this case that there was a -- basically a</p>	<p>1 board those two barges.</p> <p>2 Q Oh, it was a package deal, in other words?</p> <p>3 A In some cases it was package. In regards to</p> <p>4 some services, Tiger Shark had agreements with -- with</p> <p>5 its own subcontractors in relation to chefs and</p> <p>6 provisioning supplies and meals and various other</p> <p>7 things.</p> <p>8 Q When lodging switched to a -- more of, like,</p> <p>9 apartments and hotels, kind of -- in other words when</p> <p>10 they weren't on the barges so much anymore, who was</p> <p>11 providing the funds for that?</p> <p>12 A Regards to providing funds for that?</p> <p>13 Q Uh-huh.</p> <p>14 A I'm not sure I follow your question.</p> <p>15 Q Yeah, who paid the hotel bills?</p> <p>16 A So in the -- in the instances where Cobra</p> <p>17 Acquisitions acquired blocks of rooms for</p> <p>18 subcontractors, Cobra Acquisitions would have paid for</p> <p>19 those blocks of rooms or for housing for its workers and</p> <p>20 for the housing for certain subcontractors.</p> <p>21 Q Okay. So like the other funds we've talked</p> <p>22 about before, Cobra Acquisitions is part of the treasury</p> <p>23 function -- or can participate in the treasury function</p> <p>24 provided by Mammoth Energy Partners, correct?</p> <p>25 MR. STUKENBERG: Objection, form.</p>

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<p style="text-align: right;">Page 242</p> <p>1       <b>A</b>     I believe that mischaracterizes my testimony</p> <p>2 as it relates to the treasury function.</p> <p>3       <b>Q</b>     (By Mr. Moulton) Okay. And I don't mean to be</p> <p>4 mischaracterizing your testimony. I'm just asking you</p> <p>5 is it "yes" or "no"?</p> <p>6               MR. STUKENBERG: It's the wrong entity.</p> <p>7       <b>A</b>     You asked about Mammoth Energy Partners, and</p> <p>8 I've testified a number of times about Mammoth Energy,</p> <p>9 Inc., employees providing treasury services.</p> <p>10       <b>Q</b>     (By Mr. Moulton) Okay. So the answer to my</p> <p>11 question would be "yes" if I had said Mammoth Energy,</p> <p>12 Inc.?</p> <p>13       <b>A</b>     Mammoth Energy, Inc, yes, did supply treasury</p> <p>14 services for Cobra Acquisitions.</p> <p>15       <b>Q</b>     Okay. And those funds could have -- would</p> <p>16 have been used to pay for lodging or pretty much</p> <p>17 anything that Cobra is buying out there, correct?</p> <p>18       <b>A</b>     I don't understand the connotation of "funds."</p> <p>19 To the extent Cobra Acquisitions had contracts with</p> <p>20 subcontractors, Cobra Acquisitions would have paid those</p> <p>21 subcontractors.</p> <p>22       <b>Q</b>     Okay. But they're part of the treasury sweep,</p> <p>23 right?</p> <p>24       <b>A</b>     Cobra Acquisitions participates in that</p> <p>25 treasury management function. Cobra Acquisitions would</p>	<p style="text-align: right;">Page 244</p> <p>1 the average number of hours the workers on the island</p> <p>2 were working per day during the period of approximately</p> <p>3 October 2017 through July 22nd, 2018?</p> <p>4       <b>A</b>     The employees were either working or available</p> <p>5 to work for 16 hours a day.</p> <p>6       <b>Q</b>     Okay. Are you aware of what is meant by --</p> <p>7 what's considered to be compensable time under the Fair</p> <p>8 Labor Standards Act?</p> <p>9               MR. STUKENBERG: Objection, form.</p> <p>10       <b>A</b>     If you're asking me for a legal opinion of</p> <p>11 that particular section, I'm -- I'm not a lawyer.</p> <p>12       <b>Q</b>     (By Mr. Moulton) Do you -- well -- and I'm not</p> <p>13 asking for a legal opinion. I'm just asking for your</p> <p>14 general understanding. It -- is it your position that</p> <p>15 the -- that the plaintiffs were actually on average on</p> <p>16 the clock 16 hours per day?</p> <p>17               MR. STUKENBERG: Objection, form.</p> <p>18       <b>A</b>     I've testified as to what the hourly employees</p> <p>19 were compensated for, for either working or being</p> <p>20 available to work for 16 hours per day.</p> <p>21       <b>Q</b>     (By Mr. Moulton) Okay. Do you think that the</p> <p>22 plaintiffs were actually working any number less than 16</p> <p>23 hours per day on average?</p> <p>24               MR. STUKENBERG: Objection, form.</p> <p>25       <b>A</b>     The hourly employees were required to either</p>
<p style="text-align: right;">Page 243</p> <p>1 have made the disbursements to Cobra Acquisitions'</p> <p>2 subcontractors out of Cobra Acquisitions' checking</p> <p>3 account.</p> <p>4       <b>Q</b>     So Cobra Acquisitions gets this contract</p> <p>5 and -- indulge me for a minute -- like, how much was the</p> <p>6 initial contract amount? I want to say it was, like,</p> <p>7 240 million or something. What was it?</p> <p>8       <b>A</b>     The initial contract that was awarded in</p> <p>9 October of '17 was approximately 245-million.</p> <p>10       <b>Q</b>     Okay. So 245-million contract acquired, that</p> <p>11 Cobra Acquisitions gets, did that money get deposited in</p> <p>12 a Cobra Acquisitions account?</p> <p>13       <b>A</b>     Any payments from PREPA, in regards to the</p> <p>14 contract between Cobra Acquisitions and PREPA, would</p> <p>15 have been deposited into Cobra Acquisitions' checking</p> <p>16 account.</p> <p>17       <b>Q</b>     Okay. And then what happens to the money</p> <p>18 after that?</p> <p>19       <b>A</b>     Then Cobra Acquisitions either retains that</p> <p>20 money and pays its subcontractors or participates in the</p> <p>21 treasury management function for which money is pushed</p> <p>22 up to Mammoth Energy Partners, LLC, and in many</p> <p>23 instances was pushed back down to Cobra Acquisitions in</p> <p>24 order for Cobra to pay its vendors or subcontractors.</p> <p>25       <b>Q</b>     Okay. Oh, do you have an opinion about what</p>	<p style="text-align: right;">Page 245</p> <p>1 work or be available to work for 16 hours a day, and</p> <p>2 that was clearly communicated to each of the hourly</p> <p>3 employees.</p> <p>4       <b>Q</b>     (By Mr. Moulton) All right. And so what I'm</p> <p>5 trying to find out is, you know, we get -- we get -- we</p> <p>6 go to trial and you get up on the stand in trial and all</p> <p>7 of a sudden you start -- you might try and start saying,</p> <p>8 "Oh, well, no. They were really only working eight,"</p> <p>9 or, "They were really only working 10 or 12," or any</p> <p>10 other number. I want to know right now. Do you have an</p> <p>11 opinion about the number -- any other number other than</p> <p>12 16 hours per day?</p> <p>13               MR. STUKENBERG: Objection, form. And I</p> <p>14 think -- I think here's the clarification.</p> <p>15               MR. MOULTON: Yeah.</p> <p>16               MR. STUKENBERG: Are you asking about the</p> <p>17 number of hours where they are in the field physically</p> <p>18 performing service verses the number of hours that</p> <p>19 they're on call? Is that what you're trying to figure</p> <p>20 out?</p> <p>21               MR. MOULTON: I want to know what his</p> <p>22 opinions are because --</p> <p>23               MR. STUKENBERG: Well, because you're --</p> <p>24 you're using legal terms of art.</p> <p>25               MR. MOULTON: No, I'm not.</p>

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<p style="text-align: right;">Page 246</p> <p>1 MR. STUKENBERG: Well, you're like</p> <p>2 compensable time. Okay. Well, are --</p> <p>3 MR. MOULTON: I tried that.</p> <p>4 MR. STUKENBERG: -- you talking about</p> <p>5 on-call --</p> <p>6 MR. MOULTON: He doesn't --</p> <p>7 MR. STUKENBERG: -- time, or are you</p> <p>8 talking about physical time in the --</p> <p>9 MR. MOULTON: No.</p> <p>10 MR. STUKENBERG: -- field?</p> <p>11 MR. MOULTON: I don't -- I don't want to</p> <p>12 be dividing it up.</p> <p>13 Q (By Mr. Moulton) You ask -- I ask -- if I</p> <p>14 asked my neighbor, "How many hours you work per week,"</p> <p>15 and he tells me 10, we don't have to get into a -- or 10</p> <p>16 hours per day or 60 or whatever, we don't have a legal</p> <p>17 discussion about the number of hours.</p> <p>18 MR. STUKENBERG: You would if it was in</p> <p>19 the context of a lawsuit over hours worked, Dave.</p> <p>20 MR. MOULTON: I hear you. What -- I just</p> <p>21 want to know if -- okay. We can talk -- I want to know</p> <p>22 if he has an opinion, first of all. Then we'll talk</p> <p>23 about the different parts of it, but what I want to know</p> <p>24 is: Does he have an opinion about the number of hours</p> <p>25 he thinks these guys were working per day?</p>	<p style="text-align: right;">Page 248</p> <p>1 A I reincorporate my same answer.</p> <p>2 Q Okay. So you don't have an opinion?</p> <p>3 A That's not what I've testified to.</p> <p>4 Q Okay. Well, you don't get to not answer the</p> <p>5 questions unless they tell you not to, and there's very</p> <p>6 limited reasons for that.</p> <p>7 Do you have an opinion about the number</p> <p>8 of hours they actually worked, or no? "Yes" or "no"?</p> <p>9 MR. STUKENBERG: Same objection.</p> <p>10 A The employees were paid for the hours that</p> <p>11 they either worked or were available to work.</p> <p>12 Q (By Mr. Moulton) Okay. So you say that the</p> <p>13 number of hours that they worked or were available to</p> <p>14 work is 16?</p> <p>15 A Yes, sir.</p> <p>16 Q When you combine it?</p> <p>17 A Yes, sir.</p> <p>18 Q Okay. Do you have an opinion about the split</p> <p>19 between what they worked and were available to work on</p> <p>20 top of that?</p> <p>21 A The split between the worked and available to</p> <p>22 work?</p> <p>23 Q Yes, sir.</p> <p>24 A I would say in general, the available to work</p> <p>25 piece of that equation was less than the worked piece.</p>
<p style="text-align: right;">Page 247</p> <p>1 MR. STUKENBERG: Okay. Well, I'm going</p> <p>2 to object to all these questions being vague because</p> <p>3 they simply don't distinguish between what is</p> <p>4 compensable time and what is your actual on-call time --</p> <p>5 MR. MOULTON: I will -- I can ask those,</p> <p>6 too.</p> <p>7 Q (By Mr. Moulton) But before I get to that, I</p> <p>8 want to know before I get to that: Do you have an</p> <p>9 opinion about the number of hours you believe the</p> <p>10 plaintiffs were working per day or per week, whatever</p> <p>11 you want, in Puerto Rico between October 2017 to</p> <p>12 July 22nd, 2018? "Yes" or "no"?</p> <p>13 A The hourly employees were compensated for</p> <p>14 hours for which they either worked or were available to</p> <p>15 work, in this case, during the time period referenced,</p> <p>16 being 16 hours per day.</p> <p>17 Q Okay. I'm not asking you about what you</p> <p>18 compensated them for because that involves a conclusion</p> <p>19 about what you think you were paying them for. That's</p> <p>20 not what I'm asking. I'm asking about work.</p> <p>21 Do you have an opinion about the number</p> <p>22 of hours they worked?</p> <p>23 MR. STUKENBERG: Same objection.</p> <p>24 Q (By Mr. Moulton) "Yes" or "no"? That's a</p> <p>25 "yes" or "no."</p>	<p style="text-align: right;">Page 249</p> <p>1 Q Okay. So on average, how many -- how many</p> <p>2 hours per day were the plaintiffs in this case, during</p> <p>3 this time period from October, '17, to July, '18, how</p> <p>4 many hours were they working?</p> <p>5 MR. STUKENBERG: Objection, form. You</p> <p>6 mean working in the field?</p> <p>7 MR. MOULTON: We just talked about -- he</p> <p>8 has a -- he -- he did the split. I'm using his words.</p> <p>9 Q (By Mr. Moulton) You're saying that there's</p> <p>10 some number that's less -- you're saying that -- that</p> <p>11 they're available to work and working total 16, that the</p> <p>12 number of hours that they are just available to work</p> <p>13 versus working is less. So we're talking between 8 and</p> <p>14 16 at this point. What is the split on average?</p> <p>15 MR. STUKENBERG: Same objection.</p> <p>16 A I gave you the answer on the split.</p> <p>17 Q (By Mr. Moulton) On average, what is it?</p> <p>18 A The amount of time that the employees worked</p> <p>19 in the field versus what they were available to work</p> <p>20 depended on a number of variables including where they</p> <p>21 were working on the island, what the project was, what</p> <p>22 the security situation in the area where they were</p> <p>23 working was, how close they were to the completion of</p> <p>24 the specific project.</p> <p>25 So there are a number of variables that</p>

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<p style="text-align: right;">Page 250</p> <p>1 influenced that amount of, quote, unquote, worked versus 2 available to work.</p> <p>3 Q Okay. And I'm asking for the part that's 4 worked in the field; and even though it varied among 5 different people, different times, like you've talked 6 about, do you have an opinion on what the average number 7 would be?</p> <p>8 A On average --</p> <p>9 Q Yes.</p> <p>10 A -- we tried to keep the hours worked in the 11 field at or around 12 to 14 hours, which would squeeze 12 that available work time somewhere in the ZIP code of 13 two to four hours.</p> <p>14 Q Okay.</p> <p>15 A Just timewise, a reminder that I've got a 16 flight.</p> <p>17 Q No, I know. I got you. I'm -- I'm trying to 18 get you out of here. Just that that -- you know, it 19 shouldn't have taken an hour to get that response, but, 20 you know.</p> <p>21 Now, with that estimate you just came up 22 with on this average of about, I believe you said, 12 23 of -- of -- hours -- you said 12 to 14 hours worked in 24 the field and basically two to four, somewhere in there, 25 of hours just available to work, but the total is 16.</p>	<p style="text-align: right;">Page 252</p> <p>1 A I would have had a -- any number of 2 conversations with, you know, Mr. Ellison, Mr. Kinsey, 3 Mr. Beagle, probably would have spoken at various times 4 to Mr. Russell as well as various other operational and 5 HR personnel.</p> <p>6 Q In those discussions, did you find that 7 these -- that these discussions tended to be in 8 agreement with your estimate or were some -- do you 9 recall if anyone had a -- an estimate that was 10 significantly different from your own?</p> <p>11 A I don't recall a significantly different 12 estimate in regards to hours worked during the time 13 frame in question.</p> <p>14 Q Did -- did you guys ever look at, like, what 15 hours of daylight were available on the island to help 16 inform your -- your estimate of the hours worked?</p> <p>17 A In some cases daylight hours influenced the 18 number of hours that the teams would work, yes --</p> <p>19 Q Obviously, that's why I'm --</p> <p>20 A -- depending upon --</p> <p>21 Q That's not --</p> <p>22 A -- whether or not a crew was close to 23 finishing a project or where they were working -- and 24 you can roll your eyes and keep interrupting me. You're 25 just --</p>
<p style="text-align: right;">Page 251</p> <p>1 How did you come up with that estimate?</p> <p>2 A That estimate is based on dialogue with 3 operational personnel and my understanding of the work 4 performed in Puerto Rico.</p> <p>5 Q Who did you talk to?</p> <p>6 A Throughout the -- this engagement? I talked 7 to any number of individuals and visited Puerto Rico, I 8 believe, a couple of occasions during that particular 9 time frame.</p> <p>10 Q Fly around the Cobra helicopter?</p> <p>11 A No.</p> <p>12 Q You're not the guy that did that? Who was the 13 guy flying around in the Cobra helicopter?</p> <p>14 A We employed a number of pilots that flew 15 helicopters for --</p> <p>16 Q No. I mean there was, like, a higher-up that 17 would come down and fly around in the -- in the Cobra 18 helicopter. Do you know who that was?</p> <p>19 A I don't know what you're talking about or what 20 the connotation of higher -- higher-up --</p> <p>21 Q Okay. Never mind.</p> <p>22 So back to the -- your estimate about 23 hours. I want to know names of folks that you would 24 have used to inform or talked about to inform your 25 average, your estimate.</p>	<p style="text-align: right;">Page 253</p> <p>1 Q This isn't the --</p> <p>2 A -- belaboring --</p> <p>3 Q -- question --</p> <p>4 A -- the process.</p> <p>5 Q -- I asked.</p> <p>6 MR. STUKENBERG: It is.</p> <p>7 A It is, and I answered it.</p> <p>8 MR. STUKENBERG: He's answering your 9 question. Let him --</p> <p>10 MR. MOULTON: No, he's not.</p> <p>11 MR. STUKENBERG: -- finish.</p> <p>12 MR. MOULTON: That's not what I'm asking.</p> <p>13 MR. STUKENBERG: You asked did daylight 14 hours inform the number of hours they worked and he's --</p> <p>15 MR. MOULTON: No --</p> <p>16 MR. STUKENBERG: -- explaining how it 17 did.</p> <p>18 MR. MOULTON: -- I didn't. I didn't ask 19 that question. That's the question you think I asked.</p> <p>20 MR. STUKENBERG: Can you read the 21 question back?</p> <p>22 THE REPORTER: QUESTION: "Did you guys 23 ever look at what hours of daylight were available on 24 the island to help inform your estimate of the hours 25 worked?"</p>

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<p style="text-align: right;">Page 254</p> <p>1 MR. MOULTON: To form your estimate,  2 not -- okay. That's not what he's talking about. He's  3 talking about how daylight's actually affect the hours,  4 not -- and I get that --  5 MR. STUKENBERG: To inform your estimate,  6 right?  7 MR. MOULTON: No --  8 <b>A It's how it affects the estimate and the</b>  9 <b>hours. I mean --</b>  10 Q (By Mr. Moulton) No, they're two different  11 things. Obviously -- no, no. You guys maintain that,  12 like, folks -- okay. Let me -- so --  13 MR. STUKENBERG: We got 21 minutes left,  14 Dave.  15 Q (By Mr. Moulton) We -- we --  16 MR. STUKENBERG: I'd encourage you to use  17 it effectively.  18 Q (By Mr. Moulton) We understand that at least  19 for -- for some portion of this, folks were generally  20 working during daylight hours and I get that and -- and  21 I think that's something that you would agree to, right?  22 <b>A We targeted to try to work during daylight</b>  23 <b>hours realizing that the specificity of the project and</b>  24 <b>the necessity of the project, whether -- we may be</b>  25 <b>restoring power to a hospital or to a pharmaceutical</b></p>	<p style="text-align: right;">Page 256</p> <p>1 Power?  2 <b>A No.</b>  3 Q Apart from what we've already talked about  4 today, is there -- is there anything that you know of  5 already that you wanted to correct or clarify for the  6 record that you -- that you're aware of now?  7 MR. STUKENBERG: Can you repeat that  8 question?  9 MR. MOULTON: Yeah.  10 Q (By Mr. Moulton) Like, is there anything that  11 you wanted to clarify or correct now before I pass you  12 off to your lawyers?  13 MR. STUKENBERG: Objection, form.  14 <b>A You're asking whether I'd like to correct any</b>  15 <b>previous answers today?</b>  16 Q (By Mr. Moulton) Yeah.  17 <b>A Not that I'm aware of.</b>  18 Q Okay. Or anything to add?  19 <b>A Not at this time.</b>  20 Q Okay.  21 MR. MOULTON: Pass the witness.  22 EXAMINATION  23 BY MR. STUKENBERG:  24 Q Mr. Layton, what was Mr. Beagle's role, if  25 any, in -- in approving payroll, including discretionary</p>
<p style="text-align: right;">Page 255</p> <p>1 <b>company that may necessitate the crews to work longer</b>  2 <b>than 12 hours.</b>  3 <b>So daylight is certainly a data point</b>  4 <b>that I considered in my estimate, but I also have a</b>  5 <b>pretty good knowledge of exactly what was going on on</b>  6 <b>that island and gave you an educated estimate and the</b>  7 <b>reasons why that estimate was correct.</b>  8 Q Right. And so -- and that's what I wanted --  9 what I was getting at before is, like, you know, is --  10 what I was wondering is if you had ever sat down with,  11 like, maybe a chart of, like, sunrise/sunset for Puerto  12 Rico to help you make a -- to help you arrive at a  13 better estimate.  14 Did you ever do that?  15 <b>A Again, I considered daylight in my estimate.</b>  16 <b>It's one data point of many.</b>  17 Q Okay. Helicopters. Who paid for the  18 helicopters?  19 <b>A At different points in time, Cobra Aviation</b>  20 <b>owned helicopters that performed services on the island</b>  21 <b>as it relates to Cobra Acquisitions as a subcontractor.</b>  22 <b>There were various other entities that owned helicopters</b>  23 <b>that provided services on the island as a subcontractor</b>  24 <b>to Cobra Acquisitions.</b>  25 Q Were any of the helicopters owned by Higher</p>	<p style="text-align: right;">Page 257</p> <p>1 bonuses as it relates to the Puerto Rico employees?  2 <b>A Mr. Beagle, in his capacity, certainly would</b>  3 <b>have had the ability to offer final approval over a</b>  4 <b>payroll, which would include any discretionary bonuses.</b>  5 Q So he could approve or disapprove  6 discretionary bonuses?  7 <b>A Yes, sir.</b>  8 Q That was within his scope of authority?  9 <b>A Yes, sir.</b>  10 Q Same for you?  11 <b>A Yes, sir.</b>  12 Q So if you wanted to, you could have eliminated  13 anybody's bonus you wanted to?  14 <b>A That's correct.</b>  15 Q And you could have paid anybody a bonus in any  16 amount that you wanted to?  17 MR. MOULTON: Objection, leading.  18 <b>A That's correct.</b>  19 Q (By Mr. Stukenberg) Earlier we were talking  20 about a case against Redback called Drake. Is Redback a  21 party to this case?  22 <b>A No, sir.</b>  23 Q Did -- does Redback have any relationship to  24 this case?  25 <b>A No, sir.</b></p>

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<p>1 Q And you mentioned you thought Drake may have</p> <p>2 been a case involving an alleged day rate pay practice.</p> <p>3 Have you had a chance to revisit the -- the issues in</p> <p>4 Drake?</p> <p>5 A Yes, sir. I -- I looked at some of that court</p> <p>6 documentation in one of the breaks.</p> <p>7 Q And what kind of case was Drake?</p> <p>8 A Drake was a misclassification case.</p> <p>9 Q Okay. Have you ever -- are you aware of a</p> <p>10 daily overtime compensation system?</p> <p>11 A Daily overtime such as some -- some states may</p> <p>12 require a application of an overtime rate for any hours</p> <p>13 in excess of a threshold. So, yes, to that extent, I'm</p> <p>14 aware of it.</p> <p>15 MR. STUKENBERG: I pass the witness.</p> <p>16 FURTHER EXAMINATION</p> <p>17 BY MR. MOULTON:</p> <p>18 Q Are you saying that there was any workers here</p> <p>19 that were subject to any state laws that had a -- an</p> <p>20 overtime requirement for -- a day overtime requirement?</p> <p>21 A Not that I've seen based on -- on my review of</p> <p>22 the detail.</p> <p>23 Q Okay. What kind of misclassification case was</p> <p>24 Drake?</p> <p>25 MR. STUKENBERG: Misclassification.</p>	<p>1 with this case.</p> <p>2 Q (By Mr. Moulton) Is that true, Mr. Layton?</p> <p>3 What your counsel said, is that true?</p> <p>4 A Pull up the docket and look at it.</p> <p>5 Q Is -- is what he said true?</p> <p>6 A It's a misclassification case.</p> <p>7 Q Okay. So you don't know what kind it was?</p> <p>8 A It's an exempt/nonexempt misclassification</p> <p>9 case. Go pull it up.</p> <p>10 Q Okay. Thanks for answering the question.</p> <p>11 A Thank you.</p> <p>12 Q Yeah. You're welcome.</p> <p>13 MR. MOULTON: We'll pass.</p> <p>14 MR. STUKENBERG: Nothing on my end.</p> <p>15 MR. MOULTON: Okay.</p> <p>16 THE VIDEOGRAPHER: We're off the record</p> <p>17 at 3:47.</p> <p>18 (Proceedings concluded at 3:47 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 Q (By Mr. Moulton) You said it was a</p> <p>2 misclassification type of case, but, like, there's --</p> <p>3 that's extremely broad. Like, what kind was it? Do you</p> <p>4 know?</p> <p>5 A It was a misclassification --</p> <p>6 Q On --</p> <p>7 A -- case.</p> <p>8 Q On, like, an exemption or</p> <p>9 employee/nonemployee?</p> <p>10 A It was a misclassification case.</p> <p>11 Q So you -- you're just going to keep repeating</p> <p>12 that? You don't know what kind of misclassification?</p> <p>13 A It was a misclassification of an employee.</p> <p>14 Q Okay. In what way?</p> <p>15 A A misclassification.</p> <p>16 MR. STUKENBERG: You can pull up the</p> <p>17 docket on pacer.</p> <p>18 Q (By Mr. Moulton) All right. Do you know the</p> <p>19 answer or no?</p> <p>20 A I just answered twice.</p> <p>21 Q No. What kind of misclassification?</p> <p>22 MR. STUKENBERG: It's an exempt/nonexempt</p> <p>23 case.</p> <p>24 MR. MOULTON: Okay. All right.</p> <p>25 MR. STUKENBERG: It's got nothing to do</p>	<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: MARK LAYTON</p> <p>3 DATE OF DEPOSITION: APRIL 15TH, 2022</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>

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1 I, MARK LAYTON, have read the foregoing deposition	1 amount of time used by each party at the time of the
2 and hereby affix my signature that same is true and	2 deposition:
3 correct, except as noted above.	3 Mr. David Moulton - 05:34
4	Attorney for Plaintiffs
5	4
6	Mr. William Stukenberg - 00:02
7 THE STATE OF _____)	5 Attorney for Defendants
8 COUNTY OF _____)	6 Mr. Harris Stamey - 00:00
9	Attorney for Defendants
10 Before me, _____, on this	7
11 day personally appeared MARK LAYTON, known to me or	8 I further certify that I am neither counsel for,
12 proved to me on the oath of _____ or through	9 related to, nor employed by any of the parties in the
13 _____ (description of identity card	10 action in which this proceeding was taken, and further
14 or other document) to be the person whose name is	11 that I am not financially or otherwise interested in the
15 subscribed to the foregoing instrument and acknowledged	12 outcome of this action.
16 to me that he/she executed the same for the purpose and	13 Certified to by me on this 2nd day of May, 2022.
17 consideration therein expressed.	14
18 Given under my hand and seal of office on this	15
19 ____ day of _____, ____.	16
20	17
21	18
22	19
23 My Commission Expires: _____	20
24	21
25	22
	23
	24
	25

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION
4 FRANCISCO CANTU, et al. )
5 )
6 vs. ) CASE NO. 5:19-cv-00615
7 )
8 MAMMOTH ENERGY SERVICES, )
9 INC., et al. )
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